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MARITAL RAPE IN INDIA: POTENTIAL FOR MISUSE AND SAFEGUARDS AGAINST FALSE ALLEGATIONS

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Abstract

While strides have been made towards recognizing gender-based violence, there remains a lacuna in Indian criminal law, the rejection of harming consented spouse from legal scrutiny, which limits adult married women from seeking redress at the law courts in the event of non-consensual sexual intercourse between spouses. This research paper examines the consequences of criminalizing the marital rape of married women in India and the reasons for the need for change. Relying on critical judicial pronouncements such as *Independent Thought v. Union of India* (2017) and academicians Shalu Nigam and Vidhik Kumar, the paper explores the structural inequities located in marriage, which perpetuates sexual subjugation, yet recognizes the concerns about the possibility of abusing the process of any criminal law, as pointed out by Rajesh Rathod and Taru Singhal. Central to this research is the recognition that there is a gap in the literature specifically a failure to provide a comprehensive framework that balances protection for victims of marital rape, but at the same time, protects accused persons by allowing them procedural safeguards. By comparing and contrasting legal cases from at least three jurisdictions like the UK, Canada, and South Africa and also through outlining constitutional, sociological, and international human rights perspectives, this paper proposes a balanced legal model that criminalizes the act of marital rape while including safeguards to prevent false allegations. Ultimately this research maintains that a rights-based, gender-just, and procedurally fair legal framework is essential for the protection of all

Chapter 1 – Introduction

Despite years of legislative reform and growing conversation around women's rights in India, the law still affords exemption to one of the worst forms of sexual violence marital rape. The Indian Penal Code, through an exception in Section 375 (now incorporated into the Bharatiya Nyaya Sanhita), exempted from the definition of rape non-consensual intercourse by a husband upon his wife as long as she is over eighteen years old. This exception is a grievous residual representation of the Indian legal system's antiquated or patriarchal understanding of marriage; the notion that a woman's consent is given irrevocably once she is married.

As indicated by ¹Shalu Nigam in her article "The Social and Legal Paradox Relating to Marital Rape in India", marriage and the structures within it are inexorably linked with patriarchy and denial of women's bodily autonomy. In fact, despite this structural inequality, Indian law still allows husbands, at least legally, and then implicitly normalizes sexual violence in the context of a married couple.

Though the Supreme Court's decision in ²*Independent Thought v. Union of India* (2017) affirmed the rape of minor wives to be unconstitutional and in violation of fundamental rights – which was its progress – adult women were left unloved by the law. This reflects a contradiction: minors are protected from forced marital intercourse, while adult women are supposed to suffer silently in the shadows. While this was progress, it also suggested that we urgently need a much more comprehensive law to recognize consent while married-- both to protect minors (and don't forget, men can be victims of forced intercourse too) and adult women-- and men's rights (in the case of forced intercourse).

There is an additional layer amid the growing calls from civil society organizations, jurists and international advocates to make marital rape a crime: concerns of misuse. In particular, scholars like Rajesh Rathod and Taru Singhal have both studied the growth of false allegations of rape and the misuse of Section 498A IPC have highlighted the ways in which this contamination can damage the credibility of real survivors and weaponize the law in matters of marriage. This duality leaves us in stalemate—they won't criminalize marital rape, because they want to

¹ Nigam, Shalu, The Social and Legal Paradox Relating to Marital Rape in India: Addressing Structural Inequalities (June 2, 2015). Available at SSRN: <https://ssrn.com/abstract=2613447> or <http://dx.doi.org/10.2139/ssrn.2613447>

² *Independent Thought v. Union of India*, (2017) 10 SCC 800

mitigate its misuse, regardless of strong evidence of its existence.

Most of the past research looks at either the need for criminalization or the potential for misuse, but not many synthesize the two into a reasonable legal framework that recognizes marital (spousal) rape as a crime punishable by law, as well as engages the necessary procedural safeguards to protect against misuse. This study seeks to address this gap.

Accordingly, this study operates under the hypothesis that:

“Criminalizing marital rape, without losing the procedural safeguards that the accused has, can protect the interests of genuine victims while simultaneously being cautious of false allegations and misuse of the law.”

The goal is to consider ways in which Indian criminal law can develop in ways that reflect the nature of marriages in contemporary society which entail dynamic relationships based on consent where consent is continuous, revocable, and respected, but also weighs the procedural rights of the accused.

Chapter 2 – Conceptual and Legal Understanding of Marital Rape

2.1 Historical Context and the Marital Rape Exemption

The exception to marital rape from Indian criminal law has its roots in common law that comes from colonial law in which Sir Matthew Hale’s 17th-century doctrine indicated that “by their mutual matrimonial consent and contract, the wife hath given herself up in this kind unto her husband, which she cannot retract.”³ This archaic reasoning formed Exception 2 to Section 375 of the Indian Penal Code (IPC), 1860, which states that sexual intercourse by a man with his own wife, the wife not being under the age of fifteen years, is not rape.⁴

While modern democracies evolved to afford autonomy and bodily integrity to women within marriage, the above exception to marital rape persisted. It viewed marriage as having permission to have sex, with no regard to consent. The Law Commission of India has had three reports referring to the problem, but it declined to recommend the removal of exception due to the fact that it may cause disruption to family dynamics.⁵

³ Hale, Matthew. *The History of the Pleas of the Crown*, Vol. 1 (1736)

⁴ Indian Penal Code, 1860, Section 375, Exception 2.

⁵ Law Commission of India, 172nd Report on Review of Rape Laws (2000)

2.2 Legislative Framework in India

Rape has historically, and in new law (Bharatiya Nyaya Sanhita, 2023), been defined under Section 375 as an act of a man committing non-consensual sex acts against a woman. Although the definition of rape exists under the legal context, the exception of the husband-mapping rape for criminal liability exists only if the act is committed against a wife under 18 years of age.

The legal framework in place below clearly demonstrates the inconsistency with various rights articulated in the Constitution of India including: equality (Article 14), non-discrimination (Article 15) and life and personal liberty (Article 21). Even at this point, our Parliament has not moved to amend this provision to eliminate from the statute law the exception in respect of adult marital rape on the grounds of concerns regarding false allegations and marriage privacy.

2.3 Judicial Interpretation and Progressive Decisions

The Supreme Court has recently taken a significant step towards addressing the sexual violence faced by women in India in a case called ⁶*Independent Thought v. Union of India*, where it read down Exception 2 to Section 375 of the IPC so as to make sexual intercourse with a married girl between the age of 15 and 18 unconstitutional and violative of the right to life under Article 21. The Court stated, “Merely because a girl is married does not mean her body is the husband's territory”⁷ While this was a case about child brides, it has laid a constitutional ground for challenging the more general exception of marital rape that ignores consent based on marital status.

Similarly, in ⁸*Vimlesh Agnihotri & Ors. v. State & Anr.*, the Delhi High Court appeared to acknowledge the psychological and physical effects for women of forced sexual intercourse in marriage, although it was careful not to use the word "rape" under the IPC. The Court confirmed the need for existing laws to be interpreted in a gender sensitive way.

2.4 International Human Rights Framework and India's Obligations

India has signed multiple international treaties which mandate the criminalization of marital rape, including CEDAW.⁹ The CEDAW committee has repeatedly chastised India for retaining

⁶ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁷ Ibid

⁸ *Vimlesh Agnihotri & Ors. v. State & Anr.*, AIR ONLINE 2021 DEL 1293

⁹ Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding Observations on India, CEDAW/C/IND/CO/4 (2007).

the exception for marital rape in Indian law by stating it legitimizes violence against women it violates the international normative framework.

Furthermore, countries like the United Kingdom, Canada, South Africa, and more recently, Nepal, have either expressly or progressively interpreted marital rape as a crime by courts or via legislation. India's non-action stands in stark contrast to the legal frameworks of these jurisdictions.

2.5 Conceptual Shift: Consent and Autonomy in Marriage

As noted by scholar Shalu Nigam in her article ¹⁰“The Social and Legal Paradox Relating to Marital Rape in India”, marriage is still prioritized legally in India through a patriarchal lens that emphasizes marital harmony above individual autonomy. She points out that gendered power dynamics as well as women’s economic dependency help silence women about marital rape.

We must conceptualize consent as continuous, revocable, and affirmative; and particularly in the marriage context, where power dynamics can hamper a woman’s ability to say no. To make this legally irrelevant, is to deny dignity and equality, which are essential constitutional values.

While there has been some progress in recent times, we find the current legal framework is still deficient and regressive. It does not criminalize sexual violence that occurs in the context of a non-consensual sexual act within marriage. The established legal position must be followed through to legislative change; so that the recognition of consent, autonomy, and dignity can be addressed legally. The absolute exemption of marital rape perpetuates deep inequality between genders, and also contravenes domestic constitutional guarantees and international obligations to respect human rights. A legal structure that refuses to recognise a woman’s right to bodily autonomy in the context of marriage allows for a culture of impunity and silence.

Chapter 3 – Advocacy for Criminalization of Marital Rape in India

3.1 Emergence of Feminist Legal Discourse and Public Mobilization

The drive to criminalize marital rape has been persistent in India, led by feminist organizations,

¹⁰ Nigam, Shalu, The Social and Legal Paradox Relating to Marital Rape in India: Addressing Structural Inequalities (June 2, 2015). Available at SSRN: <https://ssrn.com/abstract=2613447> or <http://dx.doi.org/10.2139/ssrn.2613447>

human rights organizations, legal scholars, and survivors. The core argument underpinning these movements is that marriage cannot extinguish a woman's right to bodily autonomy and sexual consent. The demand to criminalize marital rape evokes the constitutional vision of equality and dignity in Articles 14, 15 and 21 of the Constitution.

Following the Nirbhaya incident in 2012, the Justice Verma Committee strongly recommended criminalizing marital rape and held the position that:

"The fact that the accused and victim are married should not be a valid defense against a rape charge."¹¹

Although the recommendation was firmly opposed by the government and in light of the societal conservatism around this issue, the Criminal law (Amendment) Act, 2013 failed to enact the recommendation.

3.2 Feminist Legal Theories Supporting Criminalization

In "Marriage or License to Rape?", Vidhik Kumar highlights the inconsistency of Indian law, which criminalizes rape if it occurs outside marriage but allows it to be tolerated within marriage of course not all marriages.¹² Kumar believes consent to sexual relations cannot be a permanent blanket in marriage. This position aligns with feminist legal theorists who considered the existence of marital rape laws a challenge to male sexual entitlement in patriarchal family structures. The structural inequalities noted by Shalu Nigam also reinforce the call for reform. Nigam remarks that women's silence is not merely explained through social stigma, but through the legal apathy to women's testimony when police and courts dismiss legal protections as a "private matter."¹³

Proponents argue that the recognition of marital rape is critical to ensure that women have equitable access to justice and that their bodies are properly not recognized as their husband's state backed property.

3.3 National Commissions and Reports Supporting Reform

Multiple official bodies have given approval of criminalization:

¹¹ Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013), p. 113.

¹² Kumar, Vidhik (2021) "Marriage or License to Rape? A Socio-Legal Analysis of Marital Rape in India," Dignity: A Journal of Analysis of Exploitation and Violence: Vol. 6: Iss. 3, Article 6. <https://doi.org/10.23860/dignity.2021.06.03.06>

¹³ Nigam, Shalu, The Social and Legal Paradox Relating to Marital Rape in India: Addressing Structural Inequalities (June 2, 2015). Available at SSRN: <https://ssrn.com/abstract=2613447> or <http://dx.doi.org/10.2139/ssrn.2613447>

Justice Verma Committee Report (2013) – recommended abolishing the marital rape exception. Parliamentary Standing Committee on Home Affairs (2013) – recommended reconsideration of Exception 2 from Section 375.

National Commission for Women (NCW) - still pushing for changes to ensure women's rights to safety and equality in a marriage.

¹⁴With the recent split verdict from the Delhi High Court on the PIL questioning the constitutionality of Exception 2 in *RIT Foundation v. Union of India*, the issue has been brought back into the public discourse, where one judge deemed the exception unconstitutional and the other judge said it is constitutional, but it needed to have parliamentary action. The Supreme Court will now decide, which could represent a watershed moment for criminal jurisprudence in India.

3.4 Comparative Legal Developments Across Jurisdictions

There are over 100 countries around the world that have recognized and criminalized marital rape, including Canada (1983), South Africa (1993), Nepal (2006), and the UK (1991). The European Court of Human Rights and UN special rapporteurs have repeatedly condemned marital rape as a form of gender-based violence that requires no exception.

India's resistance to this shift is frequently criticized as regressive and in violation of its international obligations that include CEDAW and the ICCPR.

3.5 Arguments from Survivors and Civil Society

Survivor testimony after survivor testimony show an ongoing course of sexual violence in marriage and a feeling of legal impotence. Multiple survivors reported that police and legal authorities invalidate their experience because there is no law against marital rape.

Women's rights groups like Jagori, Breakthrough, and SAHRDC included affidavits and policy papers that stress the urgency for the law to give recognition to marital rape as a crime and noted that to not have law creates two classes of women (married and unmarried) with marital women having less legal protection.

¹⁴ *RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1895 (Split verdict)

3.6 Societal Resistance and Legislative Inertia

Legislative reform was rejected regardless of strong advocacy based on systemic patriarchal values and concerns about misuse. Submissions from government in court have been made that suggest the criminalization of consensual sex within marriage would undermine marriage.

Feminist authors have contested this perspective as a misreading of what consent means. Consent is not inconsistent with marriage - consent must be penalizable so that institutions are not acting with impunity.

A framework for balancing interests that will be explained later in this paper is proposed in part to acknowledge the distinction between a real need for protection yet appreciate concerns about misuse.

Push to criminalize marital rape in India is persistent and legally justified by constitutional morality, feminist jurisprudence and international rules, yet the lack of action can only be accounted for by inevitable hesitance to challenge patriarchal assumptions underlying family law. It is precisely because of transition into more rights-based legal framework that criminalization is both ethical and legal norm.

Chapter 4 – The Risk of Misuse and the Case for Safeguards

4.1 Introduction: Concerns Regarding False Allegations

There has been a robust opposition to the support of criminalizing marital rape in India from multiple sources of opposing voices, particularly from those specifically worried about the misuse of marital rape laws. The primary risk factor articulated is the anticipated false accusations of marital rape, including being a function of a breakdown in a marriage, motivated by marital property disputes, or solely retaliatory. Applying that reaction to putting an innocent husband in the position of confronting undeserved criminal charges for an accusation of marital rape, and potentially disbanding a marriage and destroying reputations.

Rajesh Rathod discussed this issue of false accusations of rape as a part of sexual violence allegations from a general legal perspective, but there are particular challenges in cases of marital rape because these allegations are private acts wrapped up in issues of intimate partner power dynamics and including evidencing difficult to establish. ¹⁵Rathod stressed that we need

¹⁵ Rathod, Rajesh, False Rape Accusations in India: Legal, Sociological, and Technological Perspectives

to assure the legal approach: the subject must acknowledge the interests of the victims with minimizing false allegations against the accused.

4.2 Historical Context: Gender Bias and Misuse of Laws

Concerns about the misuse of legal provisions created to protect women in India are not far-fetched. Section 498A of the IPC, which criminalizes cruelty committed by a husband or his relatives against a wife, has been accused of being misused. Some argue that it has been used by some women to file false cases based on personal grievances, family disputes, or to gain leverage in a divorce or property settlement. The Supreme Court's ruling in *Arnesh Kumar v. State of Bihar* (2014) acknowledged this concern and held that husbands ought not to be arrested at the mere reporting of a 498A complaint, and due diligence must be exercised in advance of the arrest of an accused.¹⁶

Concerns about the misapplication of gender-based laws has also extended to the issue of marital rape. Proponents of the criminalization of marital rape argue that the sufficient procedural safeguards that are suggested already can minimize any potential abuse, while still fulfilling the important purpose of protecting victims.

4.3 Key Arguments for Safeguards in Marital Rape Laws

While it is important to move toward the criminalization of marital rape, there is also increasing understanding that the law will need to have some reasonable safeguards against misuse. One consideration is the need for clarity and a proper protocol.

¹⁷In her analysis of the misuse of Section 498A, Taru Singhal calls for a proper legal structure, so vague allegations cannot be made for reasons other than justice. This includes:

1. Rights to cross-examination: The accused must have the opportunity to contest evidence and question witnesses.
2. Clear legal definitions: There should be an explicit legal definition of marital rape to ensure there is no confusion.

(November 24, 2024). Available at SSRN: <https://ssrn.com/abstract=5033133> or <http://dx.doi.org/10.2139/ssrn.5033133>

¹⁶ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

¹⁷ Singhal, Taru, *The Double-Edged Sword: Uncovering the Misuse of Section 498A IPC by Women in Marital Disputes* (April 10, 2024). Available at SSRN: <https://ssrn.com/abstract=4790189> or <http://dx.doi.org/10.2139/ssrn.4790189>

3. Investigative protocols: There should be a tightly defined structure to ensure the locations of medical evidence and witness statements are known.

4.4 Comparative Jurisprudence: Safeguards in Other Jurisdictions

In Canada, South Africa, and the United Kingdom, marital rape is criminalized, but laws contain safeguards against false claims. The Sexual Offences Act 2003 (UK), although sexual violence in a marital context, can only succeed if the charge is supported initially by reasonable grounds, which included proof of lack of consent and evidence of potential force or threat.

In short, by stipulating procedures for responding to charges of marital rape, South Africa's laws also include measures to not enforce frivolous charges. Similarly, in Nepal, marital rape was deprecated in the Muluki Ain 2006, and included provisions for protecting against unintentionally frivolous claims, such as stipulating that the prosecution bears the burden of proof, for example, established principles or elements to be considered in their allegation of an act; courts must also apply these measures and criminal law principles substantively to the evidence at hand,

These examples provide insights on how India may be equipped to provide such safeguards through legislation without losing sight of the purpose for criminalizing marital rape.

4.5 Safeguards to Minimize Misuse in India's Legal System

The Indian legal scheme has to create a holistic framework to address independently concerns of misuse. The framework can contain the following safeguards:

Clear procedural safeguards: The law can use the Sexual Offences Act (2003) provisions in the United Kingdom, and require certain evidence of force, threats, or violence to be established before charges are registered.

Independent investigations: Rather than investigations being left to the whim of either the police or the parties, it should be noted that the investigation should ideally be conducted with proper checks and balances, and via an independent agency or parties appointed to conduct the investigation, such as a court.

Psychological support for victims: Offering victims access to psychosocial services can also work in helping to avoid false claims linked to victims' emotional distress.

Independent legal representation: The accused should also receive independent legal representation, and if desired, which should formally begin from the moment the investigation begins, to support the accused and fairness of the trial.

By including these safeguards, legal reforms would ensure issues of misuse are avoided, as with any law, around the area of the law's main purpose, which is to protect victims from sexual violence.

4.6 Role of Legal Professionals and Civil Society

Lawyers, advocates, and social workers are vital components of safeguarding compliance. Police officers, judges, and legal professionals need to be trained on the specifics of marital rape and existing safeguards to limit misuse.

Moreover, civil society must continue their advocacy efforts to raise awareness and support victims while safeguarding accused rights. As mentioned by Meghnila Chakraborty, the law's application can be impacted by social attitudes and misconceptions about marital rape and ongoing public education will certainly be needed in combating stigma.¹⁸

4.7 Balancing Victim Protection and Rights of the Accused

The criminalization of marital rape is an important move toward achieving gender equality, and protecting women's autonomy within marriage. To protect against the abuse of this legal reform, it is crucial to create a defined legal framework, firm procedural safeguards, and a mechanism to protect both the victims and the accused. India needs to develop these measures to create a fair balance of victims' rights, and to deter false allegations, to pursue justice, without infringing on the legitimacy of the legal process.

Chapter 5 - Legal Framework and Safeguards in India

5.1 The Legal Landscape in India

The legal framework regarding sexual violence in India has a gap in compassionately handling the issue of consent in marriage, specifically with regard to marital rape. While the Indian Penal Code (IPC) recognizes different forms of sexual violence, including rape (Section 375) and

¹⁸ Chakraborty, Meghnila and Ganguli, Prithwish, Misappropriation of Women-Specific Laws in India: A Critical Perspective From the Atul Subhash Case (January 11, 2025). Available at SSRN: <https://ssrn.com/abstract=5093856> or <http://dx.doi.org/10.2139/ssrn.5093856>

sexual harassment (Section 354), it excludes sexual acts by a husband with his wife if she is over 15 years of age. This exclusion has been debated for a long time because many believe that it must be amended to treat marital rape as criminal act by law.

Undoubtedly, the framework regarding marital rape needs to be understood within the other laws governing sexual violence, the issue of gender-based discrimination, and human rights in India. To be sure, there has been some progress concerning sexual violence generally in public life, but the fact that marriage is a private relationship complicates the legal recognition of rape within marriage. This chapter will comment upon the current legal framework and offer some suggestions for possible safeguards that try to balance the protections for the victims with the rights of the accused.

5.2 Existing Legal Provisions on Sexual Violence in India

Section 375 of the Indian Penal Code introduces the crime of rape wherein consent is a fundamental element in the offence. However, the law still contains an exemption for rape occurring in the context of marriage, where the husband is not legally culpable for rape against his wife unless she is under 15 years of age. The Exception to Section 375 states:

"Sexual intercourse or sexual acts by a man with his wife, the wife not being under fifteen years of age, is not rape."¹⁹

This has led to an outcry about the law for ignoring that women do not simply surrender their autonomy in marriage and acknowledges the widely outdated notion that a husband has rights to a wife's body. In all, this exemption stipulation clings to the historical fact that a wife is subservient to her husband as a partner in marriage as well as failing to provide clarity around woman's autonomy or agency. As discussed by Shalu Nigam in her article addressing structural inequalities in marriage, this stance continues to lend itself to a male-partner dominated marital relationship.²⁰

The Criminal Law (Amendment) Act, 2013, proposed following the 2012 Nirbhaya case, expanded the definition of rape under Section 375 and included new offences like sexual harassment and stalking. However, it is important to note that the Act did not address the matter of marital rape, and that Section 375, i.e. the exemption, remains unchanged, and thus a large

¹⁹ Indian Penal Code, 1860, Section 375, Exception 2

²⁰ Nigam, Shalu, The Social and Legal Paradox Relating to Marital Rape in India: Addressing Structural Inequalities (June 2, 2015). Available at SSRN: <https://ssrn.com/abstract=2613447> or <http://dx.doi.org/10.2139/ssrn.2613447>

gap in India's legal framework has been left intact.

5.3 Calls for Reform: Advocates for Marital Rape Criminalization

Growing momentum has emerged in recent years from activist groups and progressive legal activists in India, advocating for the criminalization of marital rape. Advocates argue that the criminalization of marital rape is necessary to defend women's rights, human rights generally and the right of women to legally autonomous bodily integrity in a marriage.²¹ In 2017, the case of *Independent Thought v. Union of India* (2017) recognized that child marriages are unconstitutional, establishing an important precedent for the consideration of gender-specific situations in the Indian constitutional framework and punctuated the importance of recognizing women's fundamental rights through its reasoning, and indicated the need to rethink the laws that do not recognize women's non-negotiable bodily autonomy inside a marriage, albeit indirectly and perhaps not specifically about marital rape, but about consent. Many legal scholars are suggesting, e.g.,²² Vidhik Kumar, that criminalizing marital rape falls squarely within women's rights, as well as reflects the value of our commitment to cultural change towards gender relations and equality in the legal context. Furthermore, the case studies from both the United Kingdom and South Africa show that marital rape can be criminalized with no significant negative impact on marriage as an institution, as long as certain procedural protections are added.

5.4 Procedural Safeguards: Balancing Victim Protection and the Rights of the Accused

One of the primary issues in criminalizing marital rape is the fear of false accusations. Those opposed to the criminalization of marital rape argue that marital disputes could be weaponized, and that the law might be used by people for purposes of divorce, property disputes, or simply out of spite. Although this is a legitimate concern, it is important to remember that false allegations of sexual violence are statistically low when compared with the numbers of people who do not report sexual violence.

Rajesh Rathod argues that the fear of misuse obscures the seriousness of underreporting of sexual violence in marriages.²³ In order to minimize misuse of the marital rape legislation,

²¹ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

²² Kumar, Vidhik (2021) "Marriage or License to Rape? A Socio-Legal Analysis of Marital Rape in India," *Dignity: A Journal of Analysis of Exploitation and Violence*: Vol. 6: Iss. 3, Article 6. <https://doi.org/10.23860/dignity.2021.06.03.06>

²³ Rathod, Rajesh, *False Rape Accusations in India: Legal, Sociological, and Technological Perspectives*

India's legal framework needs to be developed with protections in place for both the victim and the accused.

Key safeguards include:

- **Clear legal definitions:** The term "marital rape" needs to be specifically defined so as to eliminate any vagueness or any potential abuse of the provision.
- **Burden of Proof:** The burden of proof must stay with the prosecution so that the accusations are based on evidence such as medical reports, witness statements, and forensic evidence.
- **Mandatory investigative procedures:** There is a need for policemen to receive training on gender-sensitive investigations to ensure all evidence is subject to scrutiny.
- **Pre-trial Procedure:** Before any case goes to trial, a preliminary hearing must establish that there is sufficient evidence to go to trial, in order to prevent frivolous or malicious accusations from proceeding.

In this regard, it is noted by Taru Singhal, that it is critical to establish judicial oversight throughout investigation and trial, to limit the risk of misuse of the provisions and ensure fair trial procedures for all parties involved.²⁴

5.5 International Jurisprudence and Best Practices

The issue of the criminalization of rape within marriage has been approached with disparate levels of achievement across various jurisdictions globally. The UK, South Africa, and Canada successfully criminalized marital rape, albeit with serious consideration given to protections.

After the invention of the Domestic Violence Act, 1998, marital rape has been identified as a crime in South Africa that criminalizes all rape within marriage. The legal mechanisms in South Africa address and strengthen the case for evidence collection and also protect the victim by way of victim assistance services.

In Canada, the Criminal Code does not differentiate between marital and other forms of rape as they are all forms of sexual assault. Thus, all women in Canada are treated equally before

(November 24, 2024). Available at SSRN: <https://ssrn.com/abstract=5033133> or <http://dx.doi.org/10.2139/ssrn.5033133>

²⁴ Singhal, Taru, The Double-Edged Sword: Uncovering the Misuse of Section 498A IPC by Women in Marital Disputes (April 10, 2024). Available at SSRN: <https://ssrn.com/abstract=4790189> or <http://dx.doi.org/10.2139/ssrn.4790189>

the law, regardless of their marital status. The law is meant to be a deterrent to abuse, while allowing for the law to be applied universally with the victim and the accused receiving practically the same protections.

India can learn from these jurisdictions with respect to the evidence-gathering aspects of the process, as well as the victim protection services provided the judicial oversight applied prior to trial.

5.6 Recommendations for Reform

India's law reform plan on marital rape should go well beyond the basic and make sure that it provides holistic victim protection while trying to balance the potential for misuse. Our specific recommendations are as follows:

- Change Section 375 to make marital rape a stand-alone crime and remove the exception to criminalizing marital rape.
- Create clear procedural safeguards for reporting, investigating, and prosecuting allegations of marital rape so accused persons are afforded the protection of their rights and procedural fairness.
- Address victim support holistically by providing psychological counseling, legal support, and medical assistance for victims of sexual violence.
- Train law enforcement officers to approach marital rape allegations to avoid blaming and shaming victims.

We believe that these recommendations will move India closer to a legal scheme which protects victims of sexual violence and minimizes false accusations by providing clear, fair, transparent, and procedural safeguards.

5.7 Conclusion

The criminalization of marital rape in India is essential to provide women with the same protections under marriage that are available in society. However, it does not take much research to see that this is not going to be without complications. The Indian legal system can build the framework for a solution that it has control over, but it is equally important that the systemic barriers that may stem from law is not obnoxious to justice. The goal should be to build a framework that accounts for the rights of women, but also fairness to all accused. The Indian legal system can base their provisions on the policies of other jurisdictions, but they should reflect on their existing barriers as they choose the solutions best suited to the Indian

context.

Chapter 6 – Conclusion and Recommendations

6.1 Conclusion

Criminalization of marital rape is complex and a contentious issue in the Indian context. Exception to Section 375 of the IPC currently exempts husbands from prosecution for marital rape as long as the wife is over the age of 15. . This provision illustrates the deep-rooted, cultural, and patriarchal mindset that has informed India's laws on marriage, family, and women's rights. Although there have been significant legal and social transformations of issues of sexual violence in the India context, marital rape is still permissible to some extent with the institution of marriage.

The notion of marital rape has gained traction in recent years, with greater attention from advocacy groups, progressive legal scholars, and activists seeking greater protections for women in the institution of marriage as well as the criminalization of marital rape. Progressive decisions, such as *Independent Thought v. Union of India* (2017), have stressed the need for reassessing and reforming laws that are gender-biased and do not recognize women's autonomy. There appears to be resistance to the change of marital rape being a human rights abuse mainly due to arguments of potential misuse and the implications for the marital relationship.

In this sense, the key issue is balancing victim protection and the rights of accused people. While the criminalization of marital rape is important to defend women's bodily autonomy, there ought to be a legal response that will provide some procedural protections against false allegations and safeguard fair trial rights. The absence of clear and definitive legal definitions and support for victims has not only limited its use but also increased the fear of abuse.

This chapter finds that if criminalization is grounded in procedures that adequately protect accused persons, criminalization can provide some measure of relief to victims, while protecting the rights of the accused. A balanced approach like this will enable India to develop a legal framework that is fair, just, and consistent with international human rights obligations.

6.2 Recommendations for Reform

1. Amendment of Section 375 IPC

The Indian Penal Code (IPC) - Section 375 must be amended, to directly criminalize marital rape. The Provision in Section 375, remove it completely, then treat sexual violence of any kind in a marriage, as rape. That will show that India is serious about gender equality and women's rights, even within marriage.

Recommendation: The amendment must clarify the limits of what constitutes as rape, providing spousal consent as an essential factor in determining if consent was legitimate where sexual acts were evaluated. Likewise, the minimum consent provision must be made uniform at 18 years without exception for wives who are less than 15.

2. Clear Legal Definitions and Procedures

A thorough legal framework must be developed to define marital rape as a distinct category of sexual assault, and distinguish it as a separate issue from other forms of sexual assault. To accomplish this, the language of Section 375 should be amended to define marital rape without distinguishing based on age or marital status. Additionally, clear definitions will help protect the victim and the accused from any possible misuse of the legislation.

Recommendation: India should adopt a definition similar to that of South Africa, which defines marital rape as rape regardless of marital status, and introduce the appropriate processes in investigating and prosecuting marital rape offences.

3. Incorporation of Procedural Safeguards

In acknowledgement of apprehensions regarding the potential for marital rape laws to be misused, it is relevant to build some procedural protection, to safeguard against those concerns in terms of fairness to each party. Whether a complainant or an accused, the rights of the accused should be protected during the investigation, during the trial, and the accused should also have protection from being falsely accused of a crime.

Recommendation: Some of the safeguards that could be put into place include:

- The requirement for **thorough and mandatory investigations** (which should include medical records, forensic evidence, witness statements, etc.)
- A **preliminary hearing** before the trial to determine the strength of the evidence.
- **Monitoring of judicial action to regulate whether cases of marital rape are fully, thoroughly, and fairly investigated and prosecuted.**

4. Victim Support Mechanisms

A holistic legal response to marital rape must also encompass, at a minimum, safety and support services for victims including medical care, psychological counseling, legal assistance, and safe places for women who choose to leave a violent relationship.

Recommendation: Establish hotlines, safety services, and counselling services for victims of sexual violence in marriage. Also include an expansion of the Victim Compensation Scheme to include victims of marital rape with financial support and counseling.

5. Public Awareness Campaigns

Public education is important to change the normative cultural understandings associated with sexual entitlement within marriage. Educational campaigns must help raise awareness about consent, bodily autonomy, and the legal rights of women in marriage.

Recommendation: Government should initiate national campaigns that change society's attitudes about marital rape and foster gender equality; campaigns that would involve and address law enforcement, lawyers, and schools, to realistically change the overall system of sexual violence.

6.3 Comparative International Jurisprudence

The international legal framework provides useful lessons for India as it considers the criminalization of marital rape. Jurisdictions such as the UK, South Africa, and Canada have criminalized marital rape and have developed ways of safeguarding the process and supporting victims that India can mirror.

- **South Africa:** The Domestic Violence Act of South Africa (1998) criminalizes all forms of sexual violence, including spousal rape. The Act provides for victim protections, safe lodgings for victims, psycho-social support services for victims, and procedural protections for the accused.
- **United Kingdom:** In the UK, spousal /marital rape was criminalized in 1991 after numerous significant court cases. The UK has created a robust legal and support system relating to sensitive forms of investigation and victim support.
- **Canada:** The Criminal Code of Canada does not distinguish between spousal /marital rape and non-marital rape and treats all forms of sexual assault equally. In general, Canada's legal system is supported by victim support mechanisms and the fair trial rights of the accused.

The country of India can benefit from the legal and social frameworks demonstrated by these country jurisdictions to create a legislative framework to criminalize spousal /marital rape in the country to provide a fair, sensitive legal response, and support to the victims in country.

6.4 Future Research Directions

Despite the legal issues discussed in this study around the concept of marital rape and proposed reforms, future studies might examine the sociological implications of criminalizing marital rape and might include:

- **Empirical studies** exploring the occurrence of marital rape in India.
- **Impact studies** that explore the implications of India's laws on marital violence and on gender equality.
- **Comparative studies** cross-nationally on the legal approach to marital rape.

It will also be important to consider long term evaluation studies in response to the laws that have been created, including the involvement of police agencies and the outcomes of communities with respect to criminal or civil legal processes, so that we can improve how India addresses marital rape.

6.5 Conclusion

In short, criminalizing marital rape is vital for progress in gender equality for women in marriage. But this should only take place within a carefully considered legal framework, with some guardrails for misuse and a lot of support for the victim. There is much to learn from how other countries are dealing with this issue. While concerned over misuse of the law should still be taken seriously, any approach should afford all persons whose rights we are trying to protect, due process and justice in a fair and just legal system in India, regardless of their status as victim or accused.

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