

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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MARITAL RAPE: A THREAT TO WOMEN'S RIGHTS: CONSTITUTIONAL PERSPECTIVE.

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Abstract

We are in the 21st century, the age of legal development. Despite being one of the largest democracies in the world, we are not able to protect women. We continue to depend on outdated and archaic laws for their protection, which is ridiculous because they are unable to keep up with the fast-paced demands of our society. In our society, women are treated like goddesses, but they are also treated to atrocities such as marital rape and domestic violence. Women are treated like marital objects. While we are the ones who are in favor of women's empowerment, we do not want them to be able to voice their opinion regarding the violation of their basic human rights. As a nation, we are failing if even one woman feels insecure in her own home. This paper, discusses the very disturbing topic of marital rape in India and its effects on women's basic rights. Despite the progressive legal developments and the constitutional guarantees of equality, dignity, and liberty, the law in India still does not include marital rape in the definition of rape under Section 375 of the Indian Penal Code. The absence of marriage bonds gives rise to enduring gender discrimination which breaches constitutional rights that married women possess under Articles 14 and 15 and Article 21 which provides them with equal legal protections and rights to personal freedom. The article examines how the marital rape exception brings about unfair treatment because it breaches legally protected rights which allow individuals to maintain their physical autonomy under constitutional law. The study analyzes various judicial rulings together with their impact on established legal standards which safeguard women's rights to make decisions about their reproductive health and reproductive rights. The paper establishes that India needs immediate legal recognition of marital rape as a criminal offense which will help the country reach international human rights standards and constitutional norms of democratic nations. This article explores how social and cultural dynamics interact with patriarchal structures to obstruct legal progress and society's

acknowledgment of marital rape as a most serious violation of human rights. The authors display their view that making marital rape a criminal offense requirement acts as a legal necessity which provides women with equal rights to dignity and equality that Constitution authors intended to protect. The paper demands that the entire criminal justice system must undergo fundamental transformation while public educational initiatives need to increase their efforts to stop marriage from serving as a legal protection for sexual violence offenders.

Keywords: Marital Rape, Constitutional Rights, Women's Rights, Equality, Article 21, CEDAW, Human Rights, Legal Reform, Domestic Violence.

Introduction:

In India, people think of marriage as a special and permanent thing. It is like something that nobody can question. People usually see marriage as a matter controlled by what they think is right and wrong, not by what the law says¹. What people think about marriage is very different from what actually happens to many married women². These women often suffer a lot at home, and nobody sees it, nobody hears about it. The law does nothing to help marriage or address its problems³. The Constitution of India says that every person is equal and has the right to be free. It also says that people should be able to live their lives with respect and make their own choices. For many married women, these rights do not apply at the time of marriage. In today's world, where people know a lot about the law and fight for rights, it is surprising that Indian law does not protect married women from sexual violence by their husbands. Married women should have the protection, as everyone else. Indian criminal law needs to change to protect women from sexual violence by their own husbands. Marital rape is when a husband has sex with his wife without her consent. A lot of countries that are democratic consider this to be a very serious crime and a violation of human rights. The law in India does not see it that way. It actually protects rape through something called Exception 2 to Section 375 of the Indian Penal Code. The reason for this is that people used to think that when you get married, you are saying it is okay for your husband to have sex with you whenever he wants. They also thought that a wife's body belongs to her husband⁴. This is an old way of thinking. Marital rape is still

¹ Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press, New Delhi, 2003) 247–250.

² Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, New Delhi, 1999) 85–88.

³ Law Commission of India, *Consultation Paper on Reform of Family Law* (2018) 43–45

⁴ Matthew Hale, *History of the Pleas of the Crown* (London, 1736) Vol I, 629

a problem because of these ideas. These ideas treat women like things in a marriage, taking away their freedom, respect, and the ability to make their own decisions. Women are not given the power to decide for themselves when such notions are present in a marriage. This is very unfair to women because they are beings with feelings and thoughts, not objects that can be controlled. Women should have the rights, as men, and be able to make their own choices in a marriage. The fact that this exception is still around is a problem. It violates some provisions of the Constitution, such as Articles 14, 15, and 21⁵. These articles say that everyone is equal under the law, that we cannot discriminate against anyone, and that we all have the right to life and to be free. When the law does not consider marital rape a crime, it basically says that it is okay for a husband to force his wife to have sex, which is a form of violence. This kind of thing supports the way of thinking that men are more powerful than women, which is not fair. The law on rape is a problem because it makes it seem like marital rape is not a serious issue, and that is not what the Constitution says. Marital rape is a deal, and it should be treated like any other form of rape⁶. This article seeks to examine the issue of marital rape in India through constitutional, jurisprudential, and human rights perspectives⁷. It contends that marriage cannot be allowed to function as a shield for violence, nor can tradition be used to justify the denial of basic human rights

Research Methodology:

The following doctrinal research methodology will mainly be based on the analysis of existing literature, laws, policies, and real-life cases related to marital rape in India. This study employs a qualitative research approach, combining desk research with case studies. It is second-hand information, which already exists, and the researcher collects and analyses it from someone else. This will involve information from books, Articles, journals, websites, newspapers, magazines, and other sources.

Concept and Meaning of Marital Rape:

Marital rape is when a husband makes his wife have sex with him without her agreeing to it. The big problem here is that she does not give her consent. Consent is very important because it means someone has the freedom to decide what happens to their body⁸. When someone does

⁵ Constitution of India, arts 14, 19, 21

⁶ Law Commission of India, 172nd Report (n 8)

⁷ Upendra Baxi, 'Constitutionalism and Social Justice' (2007) 1 NUJS Law Review 1

⁸ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

not give their consent, it is not an act anymore; it is a violent act. This is true even if the people involved are married to each other. Marital rape is still an act because the wife did not give her consent to have sex with her husband. For a long time, people in India have thought that when a man and a woman get married, the man can have sex with his wife whenever he wants. This idea stems from ways of thinking that place men in charge and deny women equality. The thing is, this way of thinking forgets that the Constitution says women are their own people⁹, not just part of their husbands. Marriage should not mean that Indian women lose their identity. Women are just as important as men in a marriage, and the Constitution of India guarantees them the same rights as men. Women are not just wives; they are women with their own rights. Marriage does not mean a woman loses control over her body. She has to say it is okay every time. She can change her mind at any point. When people think of marriage as a way to get consent all the time, it is like they think of a woman as something that has to do what they want, of a person who deserves respect and gets to make her own choices. So when a husband forces himself on his wife, it is not a problem between married couples. It is a big deal because it violates the basic rights every person should have. Marriage and consent are two things, and a woman's right over her body is still hers even in a marriage.

Historical Background and Origin of the Marital Rape Exception:

The idea of rape being allowed in India by law has its roots in the laws made by the British when they ruled India. IPC was created based on the morals of the era and a principle called covertures¹⁰. This principle basically meant that a married woman was not considered a person; in the eyes of the law, her identity was tied to that of her husband. The Indian Penal Code is very old. It still affects how marital rape is viewed in India. Under this way of thinking, marriage was thought to mean that people agreed to have sexual relations forever. This meant that the law thought it was not possible for a husband to rape his wife. Even though many countries have changed their laws and no longer think this way, India still follows an idea left behind by the people who once ruled the country. In India, still has this colonial way of thinking about marriage and sexual relations¹¹. The Supreme Court said something in the Independent Thought v. Union of India case back in 2017¹². They admitted that the idea of the marital rape exception is really old and based on thoughts that do not respect women equally. The Court

⁹ Article 21, Constitution of India; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC

¹⁰ William Blackstone, Commentaries on the Laws of England, Vol. I, (Oxford University Press, Oxford, 1765) 442

¹¹ N.V. Paranjape, Criminology and Penology, (Central Law Publications, Allahabad, 2021) 312

¹² Independent Thought v. Union of India, (2017) 10 SCC 800

made it clear that a wife is not something that her husband owns. The Supreme Court also said that just because people are married, it does not mean that one person can force the other to do something they do not want to do. The SC is talking about the marital rape exception and how it's not right. The marital rape exception is a problem because it says that marriage means a husband can do what he wants to his wife. The SC is saying that the marital rape exception is wrong and that it should not be allowed in a country that says everyone is equal¹³.

Present Legal Position of Marital Rape in India:

The law says that Exception 2 to Section 375 of the IPC is a rule that says when a man has sex with his wife, it is not considered rape¹⁴. This is only true if the wife is older than a certain age. This rule means that husbands do not face legal trouble for being violent toward their wives while they are married. Exception 2 to Section 375 of the Indian Penal Code is like a protection for husbands, from getting in trouble for this kind of thing. The Protection of Women from Domestic Violence Act, 2005 says that sexual abuse is a kind of violence¹⁵. It only gives women some help, like a protection order or some money. This is not enough because it does not say that marital rape is a serious crime. The people who do this thing are not punished seriously. The Protection of Women from Domestic Violence Act, 2005 should do more to stop rape and make sure the people who do it are held accountable for the Protection of Women, from Domestic Violence Act, 2005. The Supreme Court made a decision in Independent Thought v. Union of India that helped wives¹⁶. This decision of the adult married women does not help. Adult married women are still not protected by the law. This means many women do not get the help they need. The law does not recognize what happens to these women. The SC decision in Independent Thought v. Union of India was a step for minor wives. Adult married women are still suffering and the law is not doing anything to protect them.

Constitutional Implications of Marital Rape:

Violation of Article 14 – Equality Before Law

The Constitution has Article 14, which says everyone is equal under the law¹⁷. There is a major problem with the law regarding married women. If a woman is not married, the law protects her from rape. On the one hand, the marital rape exception says that a married woman is not

¹³ Articles 14 and 21, Constitution of India

¹⁴ Section 375, Exception 2, Indian Penal Code, 1860

¹⁵ Section 3, Protection of Women from Domestic Violence Act, 2005.

¹⁶ Independent Thought v. Union of India, (2017) 10 SCC 800.

¹⁷ Article 14, Constitution of India

protected from rape just because she is married. This is not fair to married women. The marital rape exception creates a difference between married women and unmarried women. Married women and unmarried women should have protection from rape, but the law does not give married women the same protection as unmarried women. This kind of classification does not make sense because the main goal of law is to keep people safe from harm and to punish people who are violent. It is unfair and against the law to deny women this protection¹⁸. Married women should have the protection, as everyone else. The law should protect women from harm and violence just like it protects everyone else.

Violation of Article 15 – Prohibition of Discrimination

Art15 says that people should not be treated unfairly because of their sex¹⁹. The problem with the marital rape exception is that it is unfair to women. This exception assumes that women cannot say no to sex after they get married. I think this is an idea because it makes women feel like they are not equal to men. The marital rape exception makes it seem like men are in charge of women when they are married. That is not right. Article 15 is supposed to protect people from this kind of treatment, but the marital rape exception does the opposite. It treats women unfairly²⁰. Makes it harder for them to be equal to men.

Violation of Article 21 – Right to Life and Personal Liberty

Article 21 says that people have the right to live with dignity, make their own choices, and have privacy²¹. When a woman is forced to have intercourse, it takes away her dignity and violates her body. Article 21 is very clear about the right to live with dignity and privacy, and forced intercourse is a big violation of Article 21 and a woman's dignity. The Supreme Court made a decision in Justice K.S. Puttaswamy (Retd.) v. Union of India back in 2017²². They said people have the right to privacy, meaning they can make their own choices about personal matters. Marital rape is a problem because it takes away the right to privacy. The right to privacy is a right that everyone should have, and marital rape does not allow people to make their own decisions about what happens in their personal lives, which is a big deal. Marital rape is a denial of the right to privacy.

¹⁸ E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

¹⁹ Article 15(1), Constitution of India

²⁰ Air India v. Nergesh Meerza, (1981) 4 SCC 335.

²¹ Article 21, Constitution of India.

²² Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

Judicial Interpretation and Evolving Jurisprudence:

The courts in India are now placing great importance on the principle that women should be able to make their own decisions and be treated with respect²³. Indian courts recognize that women's autonomy and dignity are important. Women's autonomy is increasingly recognized by the Indian courts. The Supreme Court delivered a decision in the case of *State of Karnataka v. Krishnappa* in 2000²⁴. The court said that sexual violence is not allowed and it is a violation of a woman's personal space and dignity. The court was very clear that sexual violence is an issue and it affects a woman's privacy and dignity in a very bad way. The case of *State of Karnataka v. Krishnappa* is important, as it shows that the SC takes violence very seriously. In *Suchita Srivastava v. Chandigarh Administration* (2009)²⁵, the Court said that a woman has the right to make her own choices about having a baby. This is an important part of being free to make personal decisions, which is protected under Article 21. The Court made it clear that a woman's right to make choices is a key part of her personal liberty, and this is something that the *Suchita Srivastava v. Chandigarh Administration* case is all about. In the case of *Joseph Shine v. Union of India*, back in 2018, something big happened. The Court decided that adultery should not be a crime anymore. And they made an important point: a wife is not something that her husband owns. Just because people get married does not mean the husband has control over his wife's body or what she wants to do with it. This idea goes against the reason why marital rape is not considered a crime in places. The marital rape exception is a law that says a husband cannot rape his wife. The Court's decision in *Joseph Shine v. Union of India*²⁶ says that marriage does not give a husband the right to do whatever he wants to his wife. This is a deal because it challenges the idea that a husband has ownership over his wife's sexuality. The marital rape exception is based on the idea that a husband has the right to have sex with his wife whenever he wants. The Court's decision says that this is not true. A wife has the right to say no to sex like any other woman. If her husband forces her to have sex, it is rape. The Court's decision in *Joseph Shine v. Union of India* is important because it recognizes that marital rape is a thing and that it is a crime. The thing about rape is that it is not against the law yet, but the way judges are thinking is changing. This shows that more and more people are getting uncomfortable with the fact that marital rape is still allowed. The idea that marital rape is okay is something that people are starting to question. Marital rape is still not considered a

²³ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

²⁴ *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75.

²⁵ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1

²⁶ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

crime. People are beginning to see it as a problem that needs to be fixed

International Human Rights Perspective:

Marital rape is something that international human rights frameworks are really against²⁷. The Convention on the Elimination of All Forms of Discrimination against Women, which is also known as CEDAW, says that sexual violence within marriage is a violation of women's basic rights. The CEDAW recognizes that marital rape is an issue that affects women's fundamental rights²⁸. The UK, Canada, the US, and South Africa are some of the countries made rape a crime. This means that these countries do not think that being married means someone has to have sex. The countries that have made rape a crime believe that marriage is not more important than saying yes or no to sex. The United States and other countries are saying that marriage cannot make someone have sex if they do not want to. Marital rape is a crime in these countries because they think that people should be able to say no to sex even if they are married. India has signed the CEDAW agreement, which means it must ensure its laws are in line with what the world considers right for rights. The thing is, India still does not consider marital rape a crime, and this goes against what India agreed to do when it signed up for these commitments. India signed up for the CEDAW agreement. Now, India has to follow the human rights rules as everyone else²⁹.

Socio-Cultural and Patriarchal Barriers:

The people think that men being in charge is a problem when it comes to seeing marital rape as a crime³⁰. Usually, people care more about what others think of their family and keeping their marriage together than they do about keeping a woman safe and treating her with respect. Marital rape is still not taken seriously because of these outdated ideas about men and women. People need to understand that marital rape is a crime and it hurts women. It is not about family honor or keeping a marriage stable; it is about the woman's safety and dignity³¹. Many women are afraid to talk about what happens to them in their marriages. They do not want to say anything because they are scared of what people will think of them. They also need their husband for money. They do not have anyone to help them. Some people think that if we make

²⁷ United Nations General Assembly, Universal Declaration of Human Rights (1948), Arts. 1, 3 & 5

²⁸ Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 35 (2017).

²⁹ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

³⁰ Sylvia Walby, *Theorizing Patriarchy*, (Blackwell Publishers, Oxford, 1990) 20–25.

³¹ Article 21, Constitution of India

it a crime for a husband to force his wife to do something she does not want to do, it will hurt the idea of marriage. This way of thinking is wrong because it cares more about marriage than it cares about the woman. Marriage is important. The woman who is being hurt is more important than the marriage. We need to remember that marital rape is still a thing, and we should do something to stop it³². When you think about it, marriages that are based on respect and consent are really strong. Relationships without violence actually help keep the marriage safe; they do not harm it. Marriages, like this, are better because they are built on respect and consent.

Need for Legal Reform and Recognition:

Based on constitution Making rape a crime is really important to support the basic values of equality, dignity, and personal freedom³³ The law needs to make it very clear that consent is necessary in every kind of relationship, even in marriage. We have to remember that marital rape is still rape, and it is not okay. The law has to say that people in a marriage have the right to say no to sex like anyone else. This is about making sure that everyone is treated equally and with dignity. That is what our constitution is all about. Marital rape is a deal, and we have to take it seriously, so we need to make sure the law is clear about it³⁴. Legal reform must be supported by things. We need to think about what's important for legal reform. Legal reform is very important. It needs to be supported by the people. Here are some things that can support reform the government, the citizens, the laws. Legal reform is necessary, and we must support reform to make it happen. We have to think about how we can support reform and make it work for everyone by Sensitization of police and judiciary, Public awareness and education, Strong victim support and rehabilitation mechanisms³⁵. Recognizing marital rape as a crime is not an attack on marriage. Rather, it is a necessary step toward justice, gender equality, and the realization of constitutional morality.

Conclusion and Suggestions:

In India, Marital rape is a problem. It hurts the lives of women. It also hurts their dignity and freedom. Just because a woman is married does not mean she cannot say what happens to her body. She still has the right to say no. The law that lets men rape their wives is very old. It is

³² Justice Verma Committee Report on Amendments to Criminal Law (2013) 113–116.

³³ Articles 14, 15 and 21, Constitution of India

³⁴ Law Commission of India, 172nd Report on Review of Rape Laws (2000)

³⁵ Protection of Women from Domestic Violence Act, 2005, ss. 18–23.

based on the idea that women need their husbands to take care of them. These ideas are not right for the kind of society we live in today. Marital rape is still a problem because of these ideas. Women are individuals. They have their own rights, and Marital rape affects women in India. It is a most serious issue. The first thing we need to do is make sure the law does not have a marital rape exception. We have to see rape as a crime just like any other kind of crime. At the time, we need to teach police officers, judges, and doctors about the pain and trauma that married women go through when they are sexually assaulted. This way, these women will get the care and respect they deserve. We also need to change the way society thinks. People should never say that violence is okay just because someone is married or to protect the family name. Marital rape is an issue, and we need to treat it that way. We have to remember that marital rape is a crime, like any other rape. Women should be able to say what they think without being scared. They should have people who can help them, such as counsellors and lawyers, as well as safe places to stay. Making it a crime when a husband forces his wife to have sex is not about ending marriages. It is about keeping women safe and making sure that marriage is fair and respectful. Marriage should be about both people agreeing to things and treating each other equally. If a marriage does not care about what the other person wants, then it is not a marriage. Women need to be protected, and marriage needs to be based on respect and equality. Marriage should be about love and respect, not one person forcing the other to do something they do not want to do. If India truly believes in the values of dignity, equality, and justice promised by the Constitution, then recognizing marital rape as a crime is not just necessary—it is long overdue.

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