

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

MARITAL RAPE AND CONSENT LAWS IN INDIA: THE CHALLENGES WOMEN'S AND GIRLS FACE IN THE SOCIETY WITH THE PREVAILING PRACTICES

AUTHORED BY - SHIVANGI KUMARI & NANDANI PRAKASH SINGH

Introduction

Marriage which is a traditional sacred bond between two individuals which plays an important role in bringing the two families together, communities which establish responsibilities, recognition in the society. In legal manner marriage is governed by statutes which are guarded by the HMA act 1955 and SMA act and other laws in India. Marriage is about sharing mutual respect, consent, equality. But according to our society creating such a atmosphere is sin to provide the other partner with respect and love in return expecting from the same because it hurts the patriarchal traditions and mindset there are various challenges women's have gone through in a country hke India such as practice of Sati (which is known not said to be in practice in Indian society), Child marriage, domestic violence, marital rape and others. This is what a ideal marriage is called according to the society. Consent within marriage is a continuous issue in India. Marital rape is defined as the nonconsensual sexual intercourse between husband and wife which is a very social and grey. Despite the international human rights recognising sexual autonomy as fundamental right according to Section 375 of IPC exempt sexual intercourse by a husband with his wife of 15 years from being treated as rape. Which creates a socio legal conflict as womens autonomy and integrity clash with societal norms that is seen marriage is for granting the husband unconditional sexual rights. So where does this ideal marriage is what society expect should be full filled whether it's wrong or right because according to the society everything which was prevailing in the past was a form of our custom and what our elders have left for us how can ii be wrong . Although many people don't follow the Orthodox and old mind set but still there are many society's which plays a big role in it to favour these things and then they don't even want to know where ii was originated from and for which specific reason these practices was started. The country where we perform ceremonial worship of goddess, but in reality where does our women stand, what is the position of women in Indian society. It's contradictory that women only don't support women they force the orthodox mentality on others. Where mensuration is considered a sin in many parts of the India

where during the menstruation period women don't enter the kitchens they don't sleep in the beds they sleep in a darkish or outside the house where a small bed is made for them so that they don't make anything impure, what is impure according to our Indian society if every girl who menstruate is considered to be impure then every person is impure in this world.

Prevailing practices

One of the most prevailing practices of Indian society is to check the virginity of the daughter in law of the family without her free will which hamper the women integrity, dignity and privacy. Courts have ruled that forcing any woman to undergo the virginity test violates thier fundamental rights specifically the right of privacy and dignity. In 2022 the Supreme Court of India declared that the two finger test as considered as rape and anyone found conducting it will be guilty of the conduct.

Where technology and science is taking place in every sector and field science does not support this two finger test a basis of scientific proof for conforming the virginity. Where a married woman performs it under the pressure of the husband or in laws the practice of performing at a white sheet which constitute sexual abuse which gives a lifetime trauma, physical violation and the sense of hatred towards the other person and guilt. Marital rape is a situation where where one spouse most commonly the male partner engages in a sexual intercourse with the other partner without her free will, and that's why in all your times women had been a source to satisfy the sexual wants of the men. This but it was a regular practice for them because for them women were just a material which is for a specific period to be used and then thrown. But they did not stopped their they also force women to have a sexual intercourse other than her husband which constitute sexual rape or assault. Domestic violence was normalised by women that it's normal and we the women are at fault for not satisfying a husband's wants and needs. Because in Indian society husband's are considered as god. Some people perform these kind of acts due to the hunger of the dowry which is normal and now in today's time they are gifts and who are going to use this going to be used by your daughter (it's Streedhan). It is one of the prevalent misconception in Indian society is the believe that marriage implies perpetual and automatic concern to sexual relation which assumes that when a woman is married her husband can permanently take control over her body. Which is one of the practices of the patriarchal society and dominance. Where wife are viewed as the subordinate for the husband. It is very important to draw a line between the marital duties and sexual violence both have a very huge difference in

them.

Legal Framework

According to Indian penal code IPC section 375 which defines the rape but explicitly exempt marital rape which state that sexual intercourse of a man with his own wife if she is above 15 years of age does not amounts to rape this exception work as a shield for a husband from a criminal liability for a nonsexual act in a marriage. Which was originated from a colonial legal era principles and when we talk about conjugal rights over individual autonomy.

Age of consent - earlier law allowed marital rape exemption for wives aged 15 years or above but when we follow the intervention and social reforms which was made 18 year for today then it was changed to 21 years which also didn't changed the situation because this practice shows the man' power his approval of their gender yes ! I know that in many families they gives equal respect but still it is a social concern.

Constitutional provision - there are several constitutional rights which are guaranteed and had a direct conflict with the marital rape-:

Article 74 Right to equality and equal protection of law (Marriage is about relationship between the two people and in Indian society where people considering it as relationship between the two families. But in reality in terms of law it is a relationship between two people it is about giving equal respect to each other but still matters rape is a major serious issue in Indian households. Article 14 provides with the aid for protecting the privacy and integrity from the evils like marital rape.)

Article 21 right to life and personal liberty (which includes right to life with liberty and dignity and protection from sexual violence bad women are expected to surround beyond her family, husband and children where society forced expectations on the women to fulfill all her responsibilities and it's normal for her to go through these things it is very normal in Indian societies to surpress the women on the personality how they think how they perceive everything, an according to the society for a women to think differently and break the shakles of patriarchal society and mindset which wh is considered as a sin)

Article 15 prohibition of discrimination why it is expected from the women only to perform all the activities why don't we define the men's responsibility towards women for

creating a perfect marriage why only women are abused if the marriage is At the verge of divorce, she is also blamed for the domestic violence, and women's own family expect her that she should compromise in the marriage then where does the mutual respect stand when the marriage is all about compromising• It is okay to be not okay .

Societal concept - patriarchy has laid the basis of the Indian society and working against patriarchy is against a societal expectations where women are expected to be submissive specially in matters of sexual relationship. Where in laws husband expect that women are a child bearing machines and sexual relationship means that the family is complete the demand and force women to indulge in sexual relation **with** his husband.

Most women of marital rape victims does not report about the abuse due to intense social stigma and thinking about the respect of the family and about the tabo of what will the society say. Fear of family dishonor societal judgements, economically dependent on the other party threat of marital breakdowns, emotional blackmailing by the family societal discouragement from seeking the women from justice and sexual abuse should be considered a private matter within marriage, it is normal for women to compromise in the marriage in the society domestic violence is normal physical sexual emotional abuse is considered one of the parts of the marriage. Well there are aids against the same protection of women and domestic violence act 2005 recognises sexual abuse, absence of criminal liability under IPC limits meaningful legal remedies.

Judicial interpretation - they are various case laws related to the women's suffrage of marital rape independent thought vs union of India (2017) supreme Court raised the age of constant from 15 to 18 years for married girls acknowledging that child marriage sexual exploitation violate constitutional rights . However the exemption for adults were untouched. For this many provisions like act of 2005 protection of women from domestic violence, IPC section 375 IPC section 375 and others.

Most Democratic Nations UK, Canada United States, Australia, South Africa and other countries recognise marital rape as a criminal offences. These countries recognise sexual autonomy must be respected. Many countries are still very conservative towards the misconception of for the marital rape.

Victims of marital rape Suffer serious physical abuse, unwanted pregnancy, sexually transmitted infections, psychological consequences including depression anxiety postpartum depression ptsd and in severe case suicidal thoughts and tendencies. Marital effect the family relations children who are the witness abuse isolate women. Societal silence reinforce inequality and normalise violence against women.

Conclusion

At Last but not the least marital rape in India exist at the intersection of law, society, gender in reality people don't want to talk about these issues in India well it today's context people are becoming more aware and maybe at some point of time this system will get changed and supreme Court will take the proper actions for it. Which they are providing like laws for domestic violence, age of consent and others to to foster these issues it is very important to encourage women for to fight for their tribes and stop discouraging the women to be in toxic marriages.

Footnotes / References

- IPC, §375.
S. Kumar, Marital Rape in India: A Socio-Legal Analysis (LexisNexis, 2018), 12.
IPC, §375, Explanation II.
Ibid.
Independent Thought v. Union of India, (2017) 10 sec 800.
Protection of Women from Domestic Violence Act, 2005, §3.
Ibid. Ibid.
Justice Verma Committee Report, 2013, Ministry of Home Affairs, Government of India.
CEDAW Committee, General Recommendation No. 19, 1992.
United Nations, Universal Declaration of Human Rights, 1948.
S. Narula, Gender Justice in India: Law and Policy, (Oxford University Press, 2020), 145-162.