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CRIMINALIZATION OF MARITAL RAPE IN INDIA

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ABSTRACT

In India, the prohibition of marital rape has recently been the focus of heated discussion and campaigning. Non-consensual sexual actions carried out by one spouse against the other while still being married are referred to as marital rape. Despite progress in recognizing and addressing gender-based violence, Indian law currently exempts marital rape from criminalization under an exception to Section 375 of the Indian Penal Code (IPC). Some have argued that marital rape should be handled as a private issue or that it might undermine the institution of marriage, and this exemption has allowed to maintain these myths in society. But there is a rising drive to make marital rape a crime and compensate victims. Activists, NGOs, and advocacy organisations for human rights have put in countless hours to dispel myths regarding consent, gender equality, and women's rights as well as to promote public awareness of these issues. The Supreme Court of India recognised forced sex in marriages as a kind of cruelty, demonstrating the judiciary's progress in recognising the seriousness of marital rape. Protecting women's rights and dignity within the institution of marriage necessitates criminalising marital rape. By tackling this issue head-on, India can make tremendous progress towards creating a more inclusive and just society, in which no one is exposed to sexual assault, regardless of their marital status.

This article explores the importance, obstacles, and advancements in the criminalization of marital rape in the Indian context.

Keywords: Marital Rape, Non-Consensual Sexual Actions, Human Rights, Consent, Gender Equality, And Women's Rights.

INTRODUCTION

Marriage is commonly regarded as a sacred union built on trust, affection, and mutual respect. Unfortunately, in various societies, India included, the problem of marital rape has been ignored and treated as a private issue confined to marital relations. Consequently, whether to criminalize marital rape has become a contentious and ongoing debate, igniting enthusiastic discussions, advocacy efforts, and the pursuit of justice. In recent times, there has been an increasing acknowledgement of the seriousness and frequency of marital rape, resulting in a change in perspective and a greater emphasis on the need for reform. Activists, non-governmental organizations (NGOs), and human rights groups have been instrumental in advocating for the criminalization of marital rape and promoting awareness about this issue. Furthermore, courts have started recognizing the harm caused by coerced sexual acts within a marriage, considering them a form of cruelty and thereby opening avenues for legal redress.

The objective of this article is to explore the importance, obstacles, and advancements in relation to the criminalization of marital rape in India. By analysing the legal framework,

societal attitudes, and progress made in combating marital rape, we can gain a deeper understanding of the significance of tackling this issue and securing justice for the victims.

THE LEGAL LANDSCAPE

India has made significant advancements in acknowledging and combating gender-based violence, with a comprehensive legal framework comprising multiple laws dedicated to safeguarding women's rights. Some of which are discussed below:

1. International conventions explicitly against marital rape:
 - Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)
 - Universal Declaration of Human Rights (UDHR)
 - International Convention on Economic, Social and Political Rights (ICESCR)
 - The International Covenant on Civil and Political Rights (ICCPR)

In *Vishakha v. the State of Rajasthan*, the Indian judiciary adopted the Convention on the Elimination of all forms of Discrimination Against Women which is an international convention. A lot of international conventions like CEDAW have been adopted by the Indian Judiciary many a times. Additionally, the legislature also considered it when enacting the Domestic Violence Act, 2005. However, it specifically mentions marital rape as a particularly severe form of violence against women, but no legislation has been enacted to eradicate this form. We ought to make every effort to implement this convention in its entirety.

2. International Human Rights Law Requiring an End to the Exemption for Marital Rape:
 - The UN General Assembly approved the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, and it went into effect in 1981. The Convention is the primary international human rights instrument that defines what constitutes discrimination against women and sets an agenda for national action to end such discrimination. It consists of a preamble and 30 articles. It specifically lists marital status as a prohibited ground for 'distinction, exclusion or restriction.'
 - CEDAW's General Recommendation 19 (1992)- The committee tried to fill the crack which was created by the absence of mention of violence against women in CEDAW through the use of an arguably retroactive "creative interpretation" in the drafting of the General Recommendation 19 (GR 19) in 1992. According to GR 19 Gender-based violence, defined as "violence directed against a woman because she is a woman or violence that disproportionately affects women," was explicitly added to the definition of discrimination in Article 1 of CEDAW. It includes threats of such acts, coercion, and other forms of liberty deprivation in addition to acts that cause physical, mental, or sexual harm or suffering.
 - The 1993 Vienna Declaration on the Elimination of Violence against Women (DEVAW)- The GR 19 should be read with the 1993 DEVAW, which is an extraordinary tool that undeniably highlights gender-based violence as a global human rights issue. DEVAW clearly demonstrates international consensus and political commitment to combating all forms of violence against women,

despite its non-binding nature. Violence against women is defined by DEVAW as:

Any act of gender-based violence, whether in public or private, that causes or is likely to cause women to suffer physical, sexual, or psychological harm or suffering, including threats of such harm, coercion, or arbitrary deprivation of liberty.

- Regional Instruments and the Criminalization of Marital Rape- Legislative action on spousal rape is also highly prioritized by regional human rights systems. All forms of gender-based violence are considered violations of human rights and fundamental freedoms under the 32 states that have ratified the Inter-American Convention to Prevent, Punish, and Eradicate Violence Against Women. Physical, sexual, and psychological violence that takes place "within the family or domestic unit or within any other interpersonal relationship" is included in this Convention's definition of violence against women.

CURRENT LAWS RELATING TO MARITAL RAPE

The offence of rape is criminalised in sec. 375 of the Indian Penal Code ('IPC'). It was given a more expansive definition after the Criminal Amendment Act of 2013, which includes both sexual penetration and other various sexual acts like oral sex in terms of 'rape'.

Exception Clause in Section 375 of Indian Penal Code, 1860: Exception 2 of the Indian Penal Code, 1860 states that "It is not rape when a man has sexual intercourse or sexual acts with his own wife when the wife is older than 15 years old." Therefore, we can see that it excludes the implementation of this section in between relationships between a husband and wife that is sexual in nature.

This however changed in the Supreme court decision taken in the case of Independent Thought v. Union of India, this case criminalised the rape of a married minor and directed the State and said, that for a husband to have sexual intercourse with his wife, her age should be increased from 15 to 18. But this case still did not throw light upon consensual sex between husband and wife.

Albeit there is a type of non-consensual sexual intercourse between a husband and a wife which has been criminalised under §376B of the IPC, on the grounds that they are living separately or on an account of judicial separation or otherwise.

- Conjugal rights and the concept of rape: The idea of conjugal rights should not compromise a woman's sexual autonomy according to the court. It is very much possible that people may have the misconception that restoring conjugal rights would be of no legal consequence. It is incorrect; There is no overlap or contradiction between these two. Like the formation or dissolution of a contract, marriage is not an instance in which a person loses their right to privacy. It is not a sacrament or decree of restitution of conjugal rights that permits marital rape; rather, it is a means of safeguarding the marriage institution in which the parties are compelled to share a household. Sexual intercourse is not the primary motivation behind its pronouncement it is a work by the state to save the

marriage organization. The state cannot force a person to give up their body and sexual privacy against their will.

- Domestic Violence Act, 2005: This Act deals with sexual brutality in an extensive way. Domestic violence is also known as "domestic abuse," "battering," "family violence," or "violence within a couple" when the partners are legally married or have a relationship that is one. It affects both men and women and includes a variety of forms of violence, including physical, sexual, emotional, and economic violence, which may be brought on by social inequality. The Domestic Violence Act of 2005 only covers relationships between domestic partners. The act of marital rape can be dealt with in a variety of ways under this Act. A victim of marital rape may have a history of abuse or domestic violence; The victim may suffer physical harm because of non-consensual behavior. Therefore, a husband cannot, under any circumstances, incite violence or cruelty against women. On August 23, 2005, Smt.Kanti Singh stated in a speech titled "The Motion for Consideration of the Protection of Women from Domestic Violence Bill, 2005": "Domestic Violence" refers to any and all acts of gender-based physical and psychological abuse committed by a family member against women in the family, including but not limited to simple assault, aggravated physical battering, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal use, forcible or unlawful entry, arson, property destruction, sexual violence, marital rape, dowry or related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed 'Domestic Violence'."
- JS Verma Committee Report on Marital Rape: This report is a resultant response towards the rising cases of rape in India and after the Delhi Gang Rape Case also known as the Nirbhaya Case (Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1), which pressed the government to enact more stricter rape laws to discourage violence or cruelty against women. Because of this report and the Usha Mehra Committee Report the Criminal Law Amendment Act, 2015 came into force. The view of rape during marriage is the same, and rape's nature cannot change with relationships. This was observed because The House of Lords in England, according to Lord Keith in 1991, "marriage is in modern times regarded as a partnership of equals and no longer one in which the wife must be subservient chattel of the husband," as the JS Verma committee suggested. Here, the meaning of consent was also discussed on which it was stated that consent cannot be implied by the relationship status. The South African Criminal Law Sentencing Act of 2007, which stipulates that in rape sentences, a justification for deviation from the statutory minimum punishment must be reasonable, addresses a major issue in sentencing: if judges may view marital rape as a less serious offense with lenient sentences. The CEDAW Committee's recommendations were also emphasized. Marriage should not be viewed as a termination of the wife's legal and sexual autonomy; rather, it

should be viewed as the first stage of sensitization, education, and awareness. One of the most significant contributions that distinguished sexual relations from sexual activity and sexual violence was the formulation of these recommendations considering marital rape in a manner that was more elaborate and appropriate. Although the extreme form of sexual violence against a wife is not yet covered in this report.

- 42nd Law Commission Report: The conduct of a man with his minor wife was suggested to be subject to criminal liability. The Committee, on the other hand, rejected the recommendation that because sex is a part of marriage, a husband cannot be guilty of raping his wife of any age. Rape of a judicially separated wife was made a crime in 1983 with the addition of Section 376A to the Indian Penal Code.
- 172nd Law Commission Report on Review of Rape Laws: In *Sakshi v. Union of India*, a writ petition sought several recommendations, one of which was the criminalization of marital rapes and the elimination of the marital exception clause. Additionally, the 172nd Report advocated for a gender-neutral approach to rape. India has not, however, adopted it. Again, the exception of marital rape was not included in this report's recommendations.
- 205th Law Commission Report: In the AMENDMENT TO PROHIBITION OF CHILD MARRIAGE ACT, 2006 contained provisions that Independent Thought v. Union of India reiterated further. A woman under the age of 16 cannot give her consent, which constitutes rape. Additionally, such marital relationships are regarded as invalid.

CONCLUSION

The criminalization of marital rape in India faces a significant hurdle in the form of deeply ingrained societal perceptions. There are individuals who contend that making marital rape a criminal offense would disrupt the institution of marriage and interfere with family dynamics. Others argue that it should be treated as a private matter without legal intervention. These viewpoints contribute to harmful stereotypes and undermine the crucial principles of consent, bodily autonomy, and the overall welfare of married women. To effectively tackle the problem of marital rape, a comprehensive approach is necessary, which involves confronting societal perceptions, promoting awareness about consent, gender equality, and women's rights. The first step towards initiating change is recognizing that no person should experience sexual violence, irrespective of their marital status. It is imperative to introduce legislative amendments to the Indian Penal Code (IPC) that explicitly criminalize marital rape, providing survivors with the necessary avenues for justice, support, and redressal. Making marital rape a criminal offense in India is a crucial measure to safeguard the rights and honour of women within the institution of marriage. Achieving this objective necessitates a collaborative endeavour involving legislators, civil society, and the public, working together to challenge

prevailing societal norms and cultivate a culture that prioritizes consent and equality. By confronting the issue directly and breaking the silence surrounding it, India can significantly advance towards building an inclusive and fair society, where the atrocities of marital rape are eliminated.

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