

Marital Rape in India: The Uncriminalised Crime Against Gender Justice

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Abstract - The scourge of marital rape persists as a heinous crime in India, paralleling the gravity of rape itself. Primarily targeting married women, it stands as a significant impediment to gender equity in the nation, its roots deeply entrenched in historical societal norms. Despite its pervasive existence, Indian society has largely overlooked this issue, with minimal resistance stemming from various societal factors. Regrettably, the legislative response mirrors this apathy, failing to prioritize the eradication of marital rape. While the judiciary offers a glimmer of hope, its hands are tied, lacking the authority to enact laws which remains the domain of the legislature. The current legal framework inadequately addresses the severity of marital rape, necessitating the urgent implementation of robust legislation to combat this nefarious practice.

Introduction - Throughout history, India has grappled with numerous social maladies, ranging from Sati Pratha and Child Marriage to the Devdasi and Purdah systems. While some of these afflictions have gradually faded into obscurity, others persist, plaguing modern India. Marital rape stands as a stark example, entrenched in the fabric of Indian society since ancient times and persisting unabated in contemporary times. Despite its enduring presence, both societal attitudes and legislative responses towards this scourge have remained largely indifferent. However, the judiciary's stance differs, exhibiting a proactive stance against marital rape through landmark rulings. Unlike many nations where marital rape is strictly prohibited and punishable, India lacks effective legislation to address this pressing issue.

Meaning: Marital rape, essentially a form of rape, bears minimal distinction from conventional rape, save for the fact that the perpetrator is confined to the spouse. When non-consensual sexual activity occurs within marriage, regardless of the initiator, it qualifies as marital rape. Consequently, marital rape is deemed a gender-neutral offense, although husbands typically assume the role of perpetrators in the majority of cases, with instances of wives as perpetrators being exceedingly rare worldwide. While marital intercourse is intrinsic to marriage, the notion of marital rape starkly contradicts the foundational principles of marital union.

History: Every social malaise, including marital rape, is rooted in history, and its origins trace back to ancient times. Marital rape is not a recent phenomenon but has a longstanding presence in India, spanning ancient, medieval,

and modern eras. In antiquity, women were often viewed as possessions, first of their fathers and then of their husbands post-marriage, devoid of autonomy and rights. This oppressive mindset served as fertile ground for the emergence of marital rape. Historical records attest to numerous instances of marital rape during those periods, exacerbated by the absence of effective legal protections for women and their limited awareness of their rights. Women, largely dependent on their husbands, had little recourse but to acquiesce to their husbands' dictates, regardless of their validity. These factors collectively facilitated the proliferation of marital rape throughout India's history, underscoring its enduring and pervasive nature across different epochs.

Indian Society: Human beings are inherently social creatures, reliant on society for various necessities such as safety, companionship, livelihood, and recreation. However, societies also contend with numerous social ills, which every member must confront. Thus, societies encompass both merits and demerits. Indian society, historically patriarchal and male-dominated, largely overlooks marital rape, primarily because its victims are predominantly women. Had men been the primary victims, marital rape would likely have been outlawed long ago. Few voices in India advocate for the prohibition and criminalization of marital rape. Society plays a pivotal role in combating social evils; without societal rejection, no social ill can be eradicated. In India's case, the persistence of marital rape stems from society's failure to reject it, allowing it to thrive unchecked.

Indian Legislature: The Indian legislature holds significant

potential in combatting marital rape within the country. However, there exists considerable reluctance within the Indian legislative body regarding the criminalization of marital rape. Despite numerous proposals aiming to criminalize marital rape being presented, they have consistently been rejected. Various bills have been introduced in the Indian Parliament with the objective of addressing this issue, yet none have progressed into legislation. The responsibility of criminalizing marital rape in India lies solely with the Indian legislature, but there is a notable lack of urgency in this regard. The legislature appears to be concerned that such criminalization could have adverse effects on the traditional institution of marriage in India, potentially leading to a rise in marital breakdowns.

Indian Executive: In alignment with the perspectives of Indian society and legislature, the Indian executive likewise stands opposed to the criminalization of marital rape within the country. Despite repeated appeals directed at successive Indian governments, none have displayed the resolve or fortitude necessary to enact legislation unequivocally outlawing marital rape. The rationale often cited for the lack of action on this front is a concern that implementing such laws could destabilize the institution of marriage and potentially lead to an uptick in divorce rates nationwide. Consequently, the stance taken by the Indian executive on this critical issue is deeply disappointing, reflecting a reluctance to address a grave societal concern.

Indian Judiciary: In contrast to the hesitant and restrained approach of the Indian legislature, the response of the Indian judiciary towards addressing the scourge of marital rape demonstrates a significantly more proactive stance. The judiciary, particularly the Supreme Court of India, has issued several landmark decisions strongly condemning the practice of marital rape and advocating for its criminalization on numerous occasions. Similarly, various High Courts across the country have echoed this call for action through their judgements, urging for the criminalization of marital rape in India. However, it's important to acknowledge that the role of the Indian judiciary in this matter is inherently limited. While the judiciary can advocate and set precedents, it ultimately falls upon the Indian legislature to enact laws that formally outlaw marital rape in the country.

Laws in India: In India, legislation exists to prosecute individuals guilty of rape, as outlined in Section 376 of the Indian Penal Code. However, when it comes to addressing the issue of marital rape, there is a noticeable gap in the legal framework. Specifically, there are no specific statutes dedicated to addressing marital rape. The only provision within Indian law that offers some form of protection to victims of marital rape is Section 375, Exception 2, of the IPC. This provision stipulates that if a husband engages in sexual intercourse with his wife who is below the age of 15 years, he can be charged with rape. However, a landmark decision by the Supreme Court of India in the case of

Independent Thought v. Union of India has raised the age limit to 18 years. Consequently, under current legal interpretation, if a husband engages in sexual intercourse with his minor wife, he can be prosecuted for rape, but no such legal recourse exists for adult wives. Therefore, the legal landscape in India provides only partial protection to victims of marital rape, leaving a significant gap in safeguarding individuals from this egregious violation.

Conclusion: In conclusion, it is evident that marital rape, akin to rape itself, poses a significant threat to the attainment of gender justice in India. As long as such atrocities persist, the women of India cannot truly experience freedom and independence. Marital rape stands as a major violation of women's right to equality and right to life in the country. To propel India towards development, the eradication of marital rape is imperative, as it represents a substantial impediment to progress. However, achieving this goal necessitates a fundamental shift in the mindset of Indian society, legislature, and executive. Only through proactive measures from all sectors can marital rape be effectively criminalized in India. The Indian judiciary must also exert pressure on the legislature and executive through insightful rulings. It is imperative that Indian society, legislature, executive, and judiciary unite in a concerted effort against the scourge of marital rape to successfully purge this monstrous evil from the nation.

Suggestions: After an exhaustive exploration of every facet of marital rape, it's evident that this reprehensible phenomenon has deeply permeated Indian society. Urgent action is imperative to eradicate it from the country. Here are some essential suggestions to achieve this goal:

1. Implement comprehensive legislation to fully criminalize marital rape in India.
2. Ensure equal legal protection for both minor and adult married women against marital rape, without differentiation based on age.
3. Establish uniform punishment for rape and marital rape, ensuring consistency in justice delivery.
4. Eliminate the exception for marital rape in the Indian Penal Code by repealing Exception 2 of Section 375.
5. Extend the provisions of the Indian Evidence Act to marital rape, treating it on par with rape in all legal aspects.
6. Redefine marital rape as a gender-neutral offense to ensure equitable treatment under the law.
7. Implement robust safeguards in marital rape laws to prevent misuse, such as conducting thorough investigations before arrest and protecting the accused's family from harassment.
8. Introduce penalties for individuals found guilty of falsely accusing their spouses of marital rape.
9. Recognize marital rape as a specific ground for divorce, providing victims with legal recourse to end abusive marriages.
10. Establish special fast-track courts with female judges

and staff nationwide to expedite the adjudication of marital rape cases, ensuring fair and efficient justice delivery while preventing sensationalized media coverage

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