

Navigating Legal Recourse For The Survivors Of Marital Rape In India: Exploring Remedies In The Absence Of Criminalization

Ms. Mahima Sharma^{1*}, Dr. Mandeep²

^{1*}Research Scholar, School of Law Galgotias University, Greater Noida, India

²Associate Professor, School of Law, Galgotias University, Greater Noida, India

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ABSTRACT

Marital rape, denoting non-consensual sexual intercourse within the confines of a marital relationship, persists as a critical issue in India, primarily attributed to deeply ingrained patriarchal norms and societal attitudes that uphold male dominance and control within the institution of marriage, often marginalizing a wife's consent as irrelevant or implicit. The absence of criminalization exacerbates challenges for survivors seeking legal remedies. Although India lacks specific legislation addressing marital rape, survivors can, to a limited extent, seek relief under certain provisions within various statutes. While these legal avenues may not offer comprehensive justice for victims of marital rape, they do provide a semblance of redress and support. This analysis delves into the prevailing legal framework, encompassing relevant laws, statutes, and judicial precedents, to explore available options for redress and justice within the context of marital rape in India.

KEYWORDS: Marital Rape, Criminalization, Legal Remedies, Marriage, Legislation

INTRODUCTION

The institution of marriage in India is a profound and multifaceted social construct deeply rooted in the country's rich cultural and traditional tapestry. More than just a union between two individuals, marriage is considered a sacred bond that extends beyond personal connections to unite families and communities.

Historically, within the framework of marriage in various societies, including India, distinct gender roles and expectations have been traditionally delineated. These roles often prescribed specific duties, responsibilities, and behaviors for individuals based on their gender, reinforcing societal norms. Within this framework, a prevailing belief was that husbands held complete rights over the bodies of their wives. ¹Indian society views the institution of marriage through a distorted notion where a woman is seen as consenting to serve and support her husband unconditionally. The concept of Kanya Daan in Hindu religion has exacerbated misconceptions, fostering the perception of women as possessions of their husbands after marriage, ultimately resulting in the exploitation of women in India. This notion reflected a patriarchal mindset where the autonomy and agency of women were often subordinated.² Such traditional beliefs and expectations have played a significant role in shaping power dynamics within marriages, influencing how individuals perceive and navigate their roles within the institution.

As society progressed, significant strides towards gender equality have empowered women, leading to a drastic shift in traditional gender roles. The evolving societal landscape has embraced concepts such as equality, shedding light on issues related to the autonomy of the female body. This transformation has sparked crucial discussions surrounding previously unaddressed topics, notably the recognition and discourse on marital rape. With the growing emphasis on individual rights and agency, particularly within the context of intimate relationships, the concept of bodily autonomy for women has gained prominence. This shift marks a pivotal moment in societal awareness, prompting a reevaluation of entrenched beliefs and norms. The emerging discussions on marital rape underscore the importance of recognizing and addressing issues that were historically relegated to the shadows, reflecting broader societal changes and the ongoing pursuit of gender equity.

¹ Shyam Prakesh Pandey, *Changing Dimensions of Institution of Marriage in India* 4 INTER. JOURNAL OF LAW MANAGEMENT AND HUMANITIES 64, 65 (2021)

² Deborah Kim, *Marital Rape Immunity in India: Historical Anomaly or Cultural Defense* 69 JOUR. OF CRIME, LAW AND SOCIAL CHANGE 80, 91 (2018)

² Malvika Chaturvedi, *Marriage in India and the Stigma*,

SIGNIFICANCE OF THE RESEARCH

This research contributes to the ongoing discourse on gender justice and highlights the urgent need for legal reform in a country where marital rape remains outside the purview of criminal law. It sheds light on the plight of survivors, emphasizing the importance of recognizing their experiences and providing effective legal remedies. This research is instrumental in shedding light on the legal remedies available to survivors within the current context in India, where criminalization is absent.

HYPOTHESIS

Although marital rape is not criminalized in India and lacks dedicated legislation, survivors can seek limited relief under certain provisions of existing statutes.

METHODOLOGY

This research work titled as “Navigating Legal Recourse for Survivors of Marital Rape in India: Exploring Remedies in the Absence of Criminalization.” is based on the primary and secondary data and the study made is basically doctrinal in nature. Doctrinal research is a library based research, so the answers of all the legal questions are found through investigation of the existing literature on the subject. The researcher has referred primary data in the form of The Constitution of India, The Indian Penal Code 1860, The Code of Criminal Procedure 1973, The Indian Evidence Act 1872, Protection of women from Domestic Violence 2005, Hindu Marriage Act 1955, The Bharatiya Nyaya Sanhita etc. Moreover several government reports, international report and statistical data are referred. Several secondary data sources such as websites, blogs, research article, research paper, online journals, books etc. are referred. The cases are directly taken from the Supreme Court’s official to maintain authenticity throughout the entire work.

OBJECTIVES OF THE STUDY

Following are the objectives of this research work:

- To study in detail about the concept of marital rape in India and the need for its criminalization.
- To examine the statutory provisions that offers relief to the victim of marital rape.

CONCEPT OF MARITAL RAPE

Marital rape is a distressing and pervasive form of intimate partner violence that occurs when one spouse forces or coerces the other into engaging in sexual acts without their explicit and voluntary consent within the bounds of a marital relationship.³ Unlike consensual sexual activity, marital rape involves a violation of trust, autonomy, and the fundamental right to bodily integrity within the supposed sanctity of marriage. Marital rape is not only a violation of individual rights but also a reflection of broader societal norms that have historically downplayed the significance of sexual autonomy within marriage.

The word “Rape” is derived from the word “rapio” which means “to seize”.⁴ Thus rape literally means a forcible seizure. It signifies in common terminology, “as ravishment of a woman without her consent, by force, by fear, or fraud”. Rape must be understood as the gravest kind of sexual violence against women – an extreme manifestation occurring in the continuum of sexual violence which negates the human rights of the women completely. Section 375 of the Indian Penal Code (IPC) defines the offense of rape in India. It outlines the conditions under which non-consensual sexual intercourse is considered a criminal act. However, an exception within Section 375 creates a controversial provision related to marital rape.⁵

Chapter V of the Bhartiya Nyay Sanhita 2023 is a pivotal segment of the proposed legislation, focusing on addressing offenses against women and children, particularly pertaining to sexual offenses. Within this chapter, Section 63 deals with the concept of rape and along with its ingredients. However, within this section, a significant point of contention arises in Exception 2. It states that “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.” This provision explicitly states that sexual intercourse or sexual acts by a man with his own wife, provided the wife is not under 18 years of age, is not categorized as rape.

The exemption for marital rape is viewed as problematic on multiple fronts. Firstly, it denies married women the legal safeguards afforded to their unmarried counterparts who are victims of sexual violence. Secondly, it reinforces gender disparities by treating wives as possessions rather than equal participants in a partnership. It also fails to recognize the profound physical, psychological, and emotional repercussions that marital rape can inflict upon survivors.

³ Malvika Chaturvedi, *Marriage in India and the Stigma*, 4 INTER. JOUR. OF LAW AND SCIENCE 33, 35 (2011)

⁴ *Ibid*

⁵ Md Zishan Khan, *(Marital) Rape and consent: Analyzing Marital Rape in India* 5 (Kindle, 2018)

INDIAN PENAL CODE

Having its origins in the British colonial era of 1860, the Indian Penal Code (IPC) remains the cornerstone of criminal law in India. While the IPC doesn't expressly designate marital rape as a distinct offense, it lays out provisions that can provide partial relief to victims in varying circumstances. One such provision is Section 376B, which specifically pertains to "sexual intercourse by a husband upon his wife during separation." This section addresses instances where a husband engages in non-consensual sexual acts with his wife during a period of separation, establishing it as a criminal offense under the IPC. However, it is crucial to note that Section 376B focuses solely on marital rape during separation and does not explicitly encompass non-consensual acts within an ongoing marital relationship.

Hurt (Section 319 and 323): Significant legal recourse available to victims of marital rape is Section 319 of the IPC, which addresses the concept of "Hurt," while Section 323 outlines the corresponding punishment for such harm inflicted.⁶ According to Section 319, any act causing bodily pain, disease, or infirmity falls within the purview of "hurt." Perpetrators of such acts can face punishment under Section 323, entailing imprisonment for up to one year, a fine of up to one thousand, or both. These provisions become relevant in the context of marital rape, as such incidents undoubtedly involve bodily pain. Leveraging these sections, victims of marital rape may seek legal redress, potentially leading to the punishment of the perpetrator.

Section 320 and 325 of the IPC: Section 320 of the Indian Penal Code (IPC) deals with the concept of grievous hurt, while its corresponding punishment is outlined in Section 325. As per this provision, if the harm inflicted induces intense bodily pain lasting a minimum of 20 days or renders the victim incapable of regular activities within that period, it qualifies as grievous hurt. Section 325 of the IPC stipulates that a perpetrator causing such harm may face punishment, including imprisonment for up to 7 years and a fine.⁷ Despite the non-criminalization of marital rape involving adult victims in India, if the act results in the victim experiencing bodily pain or incapacity for at least 20 days, the victim can potentially pursue legal action, seeking redress for the offense of grievous hurt committed by their spouse.

Section 339 and 341: Section 339 and 341 of the Indian Penal Code (IPC) present a potential avenue for providing redress to victims of marital rape. Section 339 deals with the concept of wrongful restraint, whereas Section 341 outlines the corresponding punishment for this offense.⁸ Wrongful restraint involves impeding an individual's movement in any direction, contrary to their rightful entitlement to proceed. As per Section 341, those found guilty of such acts may face punishment, including imprisonment for up to 1 month, a fine of up to 500 rupees, or both. The elements encompassed within the offense of marital rape often align with those of wrongful restraint. Consequently, a woman who has experienced marital rape may seek legal recourse and punishment for wrongful restraint against her husband. While this section may offer a limited remedy for victims of marital rape, it underscores the potential applicability of existing legal provisions in addressing aspects of such offenses within the current legal framework.

THE PROTECTION OF WOMEN UNDER DOMESTIC VIOLENCE ACT 2005

Enacted by the Parliament of India and effective from October 26, 2006, the Protection of Women from Domestic Violence Act, 2005, holds jurisdiction throughout India, excluding Jammu and Kashmir. This comprehensive legislation offers both civil and criminal remedies and extends protection not only to wives but also to partners in live-in relationships. The Act encompasses various forms of violence, including sexual, physical, verbal, and monetary abuses. Notably, the Act defines sexual abuse as any act that violates the dignity of women. The Act defines sexual abuse as any act that violates the dignity of women. Marital rape is also comes under the ambit of the sexual abuse which infringes the dignity of the women and that is why it is prohibited under the Act. Victims of marital rape or other forms of domestic violence perpetrated by their husbands have the legal recourse to seek relief through an application before a competent magistrate. Such applications, made under this Act, empower the victimized women to request one or more forms of relief from the magistrate. The available relief options, to be determined by the magistrate, are designed to address the specific circumstances of the victim.

- i. **Protection Orders:** In pursuit of safety and protection, a survivor has the right to petition the court for a protection order, preventing the perpetrator from engaging in subsequent acts of domestic violence. The court, in its discretion, may incorporate safety measures for the survivor, encompassing restrictions on the offender's access to specific areas or communication with the victim.
- ii. **Residence Orders:** Within the framework of the Act, survivors are empowered to pursue residence orders, entitling them to reside in either their jointly shared residence or alternative accommodation in cases where the shared dwelling is considered unsafe. The court, in its discretion, also possesses the authority to mandate the offender to arrange suitable alternative housing for the survivor.

⁶ C K Takwani, Indian Penal Code 67 (EBC Books Publication, India, 2nd edn., 2022)

⁷ K.D. Gaur, Commentary on the Indian Penal Code, 1860 454 (Central Law Publication, India, 3rd edn., 2019)

⁸ S. N Mishra, Indian Penal Code 113 (Central Law Publication, India, 23rd edn., 2023)

- iii. Monetary Relief: Courts have the authority to grant victims financial reparations, encompassing compensation for injuries, medical costs, loss of income, or property damage resulting from the actions of the perpetrator in cases of domestic violence.
- iv. Custody Orders: Acknowledging the paramount importance of the well-being of children entangled in domestic violence situations, the Act affirms the victim's right to petition for custody orders.
- v. Compensation and Maintenance: The court can order the offender to pay maintenance to the victim and children to ensure their financial security. This can include monthly or lump sum payments, depending on the circumstances of the case.
- vi. Counseling and Rehabilitation: The Act provides for counseling and rehabilitation services to both the victim and the offender, aiming to address the underlying causes of domestic violence and facilitate the victim's recovery.

THE NATIONAL COMMISSION FOR WOMEN ACT 1990

Enacted on August 30, 1990, in India, the National Commission for Women Act of 1990 stands as a crucial legal framework dedicated to safeguarding and advancing the rights of women. This significant legislation led to the establishment of the National Commission for Women, a statutory body with the explicit purpose of protecting and advocating for the rights and interests of women throughout the country.

The Complaints and Investigation Cell of the National Commission for Women (NCW) plays a crucial role in providing relief to victims of marital rape.⁹ When a victim of marital rape files a complaint with the commission, the cell ensures that the complaint is received with sensitivity and confidentiality. If the commission is satisfied that the complaint is genuine, it can forward the case to the concerned authority for further action. Although the criminalization of marital rape is still an ongoing issue, the commission can provide partial support to the victim by offering guidance, emotional support, and connecting them with relevant services such as counseling, legal aid, and medical assistance. While the commission's power may be limited in the absence of specific legislation, it strives to advocate for victims' rights, raise awareness about marital rape, and work towards the necessary legal reforms to ensure comprehensive protection for victims.

THE HINDU MARRIAGE ACT 1955

Enacted by the Parliament of India on May 18, 1955, the Hindu Marriage Act, 1955 stands as a pivotal legislation overseeing Hindu marriages in the country. Applicable to Hindus, including Buddhists, Jains, Sikhs, and individuals not adhering to Muslim, Christian, Parsi, or Jewish religions, this Act encompasses a broad spectrum. Although the Act does not expressly identify marital rape as a criminal offense, it incorporates various provisions designed to extend remedies to women facing diverse situations within marriage. These provisions, while not specifically addressing marital rape, aim to provide some legal recourse and relief to victims within the marital context.

- i. Judicial Separation: Within the framework of the Hindu Marriage Act of 1955, judicial separation emerges as a legal recourse, as outlined in section 10. This provision allows spouses to live separately while retaining their legal marital status, offering a temporary reprieve from a tumultuous relationship without the dissolution of marriage. Grounds for judicial separation under this Act include cruelty, desertion, adultery, conversion to another religion, and unsoundness of mind. Notably, while the Hindu Marriage Act does not explicitly recognize marital rape as grounds for judicial separation, victims of marital rape can seek this legal remedy on the basis of cruelty. By asserting that marital rape constitutes both mental and physical cruelty, victims can successfully pursue judicial separation as a means of escaping an abusive marriage.
- ii. Section 13 of the Hindu Marriage Act, 1955, provides a legal framework for divorce, applicable in cases of marital rape similar to judicial separation. While marital rape is not expressly listed as a ground for divorce under this section, it doesn't preclude victims from seeking divorce on those grounds. Despite the absence of a specific mention, victims of marital rape can pursue a decree of divorce by invoking the grounds of marital rape as a form of cruelty. This approach recognizes the profound impact of marital rape, both mentally and physically, establishing a basis for obtaining a divorce decree on the grounds of cruelty within the purview of the Hindu Marriage Act.
- iii. Maintenance: The victim of marital rape have the right to seek legal remedies such as a decree of judicial separation or divorce. These legal options provide them with an opportunity to escape an abusive situation and reclaim their lives. However, true dignity and respect for these individuals can only be achieved when they are provided with the necessary support, including maintenance. Under the Hindu Marriage Act, 1955, Section 24 and Section 25 encompass the crucial concept of maintenance, which extends to victims of marital rape who have obtained a decree for judicial separation or divorce.¹⁰

⁹ Neeraj Malik, "Marital Rape Laws and Women Security in India: A Critical Analysis" (2015) 4 Global Journal for Research Analysis 131-132.

¹⁰ Sumeet Malik, B.M Gandhi's Hindu Law, 4th edn., (Eastern Book Company, India, 2022) 344

CONCLUSION

In the ongoing discourse in India, the criminalization of marital rape remains a contentious and unresolved matter. Presently, the absence of a dedicated law recognizing marital rape as a criminal act underscores the need for critical examination and legal reform. Marital rape, constituting a serious violation, encroaches upon the fundamental rights and bodily autonomy of individuals within the sanctity of marriage. This reprehensible form of sexual violence exacts a toll, inflicting profound physical, psychological, and emotional trauma on its victims. The imperative for criminalizing marital rape in India is increasingly evident, marking it as a crucial and timely societal requirement.

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