



## **LEGALIZATION OF MARITAL RAPE**

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### **ABSTRACT**

The present article is an exploratory research on status of Marital Rape and need of its legalization in India. In the current scenario with increasing social evils and domestic abuse sex without consent with wife has become a common approach of a person's mind set. The male dominated society calls right to have sex with their own wife as a fundamental right. Therefore, the article discusses the lacunas of rape laws along with proposition of legalization of rape.

*Keywords- Rape, Patriarchy, Marital Rape, Legalization*

### **INTRODUCTION**

#### **Background**

A man and a woman enter into a lifelong commitment of sexual and emotional intimacy and financial equality via marriage. When two people declare their undying love for one another, they also take on responsibilities for one another. Since the dawn of time, women in our culture have been subjected to humiliation, torture, and exploitation despite the fact that they were revered. For many people, their families are their primary source of emotional and monetary support, as well as their primary means of self-fulfillment and connection with others. Any vital source of stability and support, it serves as a connection between continuity and change. There have been many instances of female victims, humiliation, torture, and abuse in India over the millennia. <sup>1</sup>Murder, rape, kidnapping, and torture have taken place since the dawn of time. Marital Rape is one the most horrifying and alarming issue in the whole world. Only a few legal

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<sup>1</sup>Sangamitra Loganathan-“*Marital Rape*”,



systems permitted the prosecution of rape inside marriage until the 1970s, when the majority of nations made it a criminal offence.<sup>2</sup> As a result of a variety of factors—including court rulings and explicit legislative references to the prohibition of using marriage as a defense—criminalization has happened in a variety of ways. Assault and battery laws may be used in certain nations to punish non-consensual sexual encounters including compulsion, such as in the case of raping a spouse.

### **Concept and Terminology- Martial Rape**

When an individual engages in sexual activity with his or her spouse without their partner's permission, this is known as spousal rape or marital rape. Non-consensual behaviour does not need physical violence. In the context of domestic violence and sexual abuse, rape is a kind of domestic violence. Historically, the freedom of spouses to engage in sexual intercourse was seen as a privilege, but now, many countries throughout the globe classify the act as rape, and international agreements denounce it as a violation of human rights.<sup>3</sup> In general, but not solely, women are the victims of marital rape. Victims of rape are typically subjected to a long-term cycle of abuse in violent relationships. State governments, cultural traditions, and social ideology all have a role in shaping how it is seen in the context of every given circumstance. There are various reasons why it is difficult to prosecute married couples who engage in non-consensual sex, including conventional conceptions of marriage, religious interpretations, notions about male and female sexuality and societal expectations that a woman should be subordinate to her husband. Second-wave feminism in the 1960s and 1970s led to a recognition of the woman's right to self-determination in all things pertaining to her body, and a removal of the exemption or defence of marital rape in most Western nations.<sup>4</sup>

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<sup>2</sup> “*Marital Rape Laws by the Country*”, Available at [https://en.wikipedia.org/wiki/Marital\\_rape\\_laws\\_by\\_country](https://en.wikipedia.org/wiki/Marital_rape_laws_by_country).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.



## Literature Review

It was written by Jennifer Keshan in 2017. This article examines how Canadian courts dealt with cases of spousal rape from 1983 to 2013. For the first time since Criminalization made such a review possible, Canada has undertaken a detailed examination of its domestic rape judgments. Issues of permission, mistake, belief in consent, proof, and sentence are at the heart of this rape investigation. The last section of this study identifies possible answers and highlights general tendencies in the case law. The Right to Say No: A Comparative Analysis of the Right to Marital Rape and Legal Reform, n.d. In the year 2016, Jermtiparsert and Kasemsukphaisit It is the purpose of this article to examine how Bangkok's males interpret Penal Code Section 276. Men's attitudes against Marital Rape are also explored. An investigation of people's opinions based on a variety of demographic criteria and the degree of knowledge they have about the law. (Kasemsukphaisit and Jermittiparsert, 2016) Stafford, Nancy Kaymar [2008].<sup>5</sup> The Ghanaian Parliament enacted the long-awaited domestic violence legislation on February 22, 2007. Humanrights for women are violated when a woman is raped in marital relations. In Ghanaian culture and law, consenting to marriage is the same as consenting to sex. Marital rape is a term that dates back to the common law of the United Kingdom.<sup>6</sup> Law Reform in Canada: A Modest Feminist Success Story in Combating Marital Rape Myths," n.d. (The Criminalization of Marital Rape). Hector G. Torres [2016]. During the 1980s, Judges held or said in dicta what the feminist movement believes to be unquestionable. When it comes to violence against married women, the Marital Rape exception denies them the protection they are entitled to.

Due to the mainstream definition of equality, Marital rape exclusions have lasted for so long. Equal protection is also re-examined in the light of differing interpretations of what it means. For example, (Torres and Gabriela Torres 2016,) Dipa Dube As one of the most horrific and barbaric crimes committed against women, rape is examined here. A woman is reduced to a living corpse

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<sup>5</sup> Ibid.

<sup>6</sup> G.V. Akshaya and M. Kannapan- "A study on marital rape in Indian legal scenario", I.J.P.A.M., Vol. 119, Issue 17, 2018. Available at- <https://acadpubl.eu/hub/2018-119-17/1/94.pdf>.



when she is raped by her husband or boyfriend. There has been a complete lack of attention paid by lawmakers to the cries for justice made by married women and the effect on victims in India. Melanie Randall More than half of the world's nations have been identified in a recent research. Inherent in acts of abuse against women are human rights violations. <sup>7</sup>Men who sexually attack or rape women may act with impunity because of the law's lack of enforcement. (Randall, Koshan, and Nyaundi 2017, for instance) Doherty, Joshua. [2012]. Article 297 of cameron's laws further marginalises married women, as discussed in this study. Allows a husband to rape his wife. With regard to marital rape, cameroon's laws are riddled with contradictions and loopholes. When it comes to (Doherty 2012). Reynold's (1995). <sup>8</sup>The reasons presented in this article support the elimination of the marital rape exception in today's culture. There is no place in society for rape in the midst of a marriage relationship. By pointing out that marital rape provides a comprehensive remedy, international law has thrown some light on the subject matter. (Ryan 1995). According to Powell in the year of 2015. For this Intimate Relationship, this article examines how to criminalise all types of sexual abuse against women, including marital rape. This research goes so far as to examine the numerous responsibilities imposed on governments by international human rights legislation as a whole. <sup>9</sup>

### **Aim/Objectives**

1. To study the rape legislation of India.
2. To study the need of criminalizing marital rape in India.
3. To compare India with the countries with having marital rape as criminalized.

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.



## **Hypothesis**

1. India does not have an inclusive and exhaustive rape legislation.
2. India has the utmost need of criminalizing rape.
3. India is lagging with its corollary small scale countries due to a rape legislation with lacunas.

## **MATERIAL AND METHOD**

The present study has followed doctrinal approach with its method being descriptive and exploratory in nature. The study has collected both primary data such as conventions, treaties, laws and case laws from various statutes, judgements of court and secondary data from books, journals, research papers and website. The data analysis has been qualitative in nature wherein no empirical study has been followed.

## **Domestic Violence in a Globalized World**

In many areas of the world, rape has generally been seen as a sin or crime of stealing a man's children (usually either a husband or father). Damages in this sense means that such action was also not seen as harm however as damages to her husband's or her sibling's business. Sir Edward Bailey (1609-1676) began writing in History of both the Pleas of such King, which was published posthumously in 1736, "The partner can just be bad of a molestation undertaken by oneself instead on his completely legal woman, for through his\her unanimous consent and collective bargaining agreement the lady hath surrendered mother in this compassionate and caring her man, who she can devolve." A person's due process rights were smothered by more of her boyfriend during married so under set of techniques principle, a legal concept, up toward the early 1900s in both American and English law. The basic premise was that after becoming



married, a person could not be convicted of assaulting their partner in the same manner that they'd be convicted of assaulting himself.<sup>10</sup>

One part of a man's power over his wife was his control over her gender identity. This same utmost colonisation of asset, as described by an English President Of The court in 1707, is infidelity of both a parent and a child, demonstrating the power a husband will have over both his own's actual sexual identity. As a consequence, as both were seen to be violations of the father's dignity, the charges of rapes and divorce were often combined. Domestic partner crime was viewed as an asset wrongdoings against man but rather a violation of the person's right to liberty. The asset to be deferred in a female must have been her sex life, according to Bergen's 2016 statement. By this reasoning, a woman would have been first its possession of her god but then just, after relationship, the asset of Elizabethan man, as she still is in other cultures and countries. So even though his lady was his property, a man just can not be convicted of raping her. But if a man sexually assaulted another man's wife, that was basically taking something (a woman's sexuality). Rape has long been regarded as a murder against physical and mental integrity, even in international law. For instance, the Third Vienna Commission's Article 27 states that women must be given special protection from attacks on their tribute, such as sexual abuse, modern slavery, and other indecent assaults. The International Tribunal (ICC) first defined marital rape against with a patient's decency, or a punishment over her daughter's or her hubby's respect, just only few generations since it first occurred. Although feminists highlighted the issue of rape and domestic violence in the 18th and 19th centuries (see the subsection above with feminist critique in the mid-1800s), but it was not until 1970s that it became a partisan issue. The Romantic Crimes (Cth) Act of 1976, which was passed as in late 1970s, also introduced a new definition of sexual. (Before this, rape is been governed by the arbitration.) The Criminal Representative Is

<sup>10</sup>[LegalServiceIndia.com/legal/article-7872-marital-rape-laws-an-international-overview.html](http://LegalServiceIndia.com/legal/article-7872-marital-rape-laws-an-international-overview.html), Ayantika Chakraborty, "Marital Sexual Law: An Transnational Background.



responsible rejected the idea that murder should always be treated as a murder in the sacrament of matrimony in its paper on sex offenses from 1984.<sup>11</sup>

## **Marital Rape in India**

Over 4% of women reported being coerced into anal sex by their wives, 2.1% reported being forced to engage in sexual activity against their will, and 3% reported being confronted with coercion to engage in sexual activity against their will. Any kind of genital violence perpetrated by one person against someone else is referred to as violence against women and girls. This instance of child marriage and marital abuse, involving Queen Empress and Haree Mohan Maiti in 1890, ended in the death of 10-year-old Phulmani Das.<sup>12</sup> Since such amount of implied consent were 10, and since having sexual relations also with bride is not considered rape within §375 of the Indian Penal Code, it Delhi Prosecution ordered the hubby to 12 months of hard labour, which defines rape. Rape, on the other hand, was found not to violate Article 21 of the Constitution in 1995 in the **Bodhisattwa Gautam against Subhra Chakraborty case**<sup>13</sup> since it impeded fundamental human rights and violated the victim's right to life and dignity. The idea of "implied consent" in marriage should be abolished, the Gujarat High Court said in its ruling in **Nimeshbhai Bharat Bhai Desai vs. State of Gujarat (2018)**<sup>14</sup> that marital rape isn't merely a concept. Women's physical autonomy must be protected by legislation (married or unmarried).

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<sup>11</sup> Ibid.

<sup>12</sup> BBC News. 2015. (May 26). "India Marital Rape Victims' Lonely Battle for Justice." (<https://www.bbc.com/news/worldasia-india-32810834>).

<sup>13</sup> 1996 SCC (1) 490.

<sup>14</sup> *Nimeshbhai Bharat Bhai Desai v. State of Gujarat, 2018 SCC OnLine Guj 732.*



## **RESULT AND DISCUSSION- INDIA NEEDS A MARITAL RAPE LAW**

According to Article 21 of the convention of the Indian Constitution, early marriage is also a rejection of a patient's basic rights, although this is made worse by the fact that it is not criminalised. To being clear, even if this felony is undertaken amid an involved connection, law services may nonetheless look into it as a crime offense. If the City stays out of their personal affairs, women which ve been molested by them spouses have almost no options. According to the NHFS-4, 31% of betrothed women faced severe, social, but instead psychological manipulation abuse by their spouses in 2015-16. <sup>15</sup> " An individualised attitude to violence against women might lead to the criminalization of rape in India. However, despite NGO efforts to raise public awareness of domestic abuse and implement laws, rape in marriage has not yet been criminalised to the same extent as rape in a stranger's home. The number of cases of marital rape is steadily rising. It has an impact not only on the victim, but also on others who are in close proximity to them. Every civilised society has had to take the painful pill and ban maritalrape, including India. It was reversed by the House of Lords in 1991, and numerous othernational, including Australia, South Africa, and others, have followed suit. Every woman has a right to live with dignity, good health and sexuality privacy.<sup>16</sup> By legalizing this offence will leadto less number of marital rape cases .

## **CONCLUSION**

Women in our nation have been harassed behind the curtains on a daily basis, in almost every region of our country. The only way out of this is to change people's dogma about marital rape, which must be addressed. Society at large believes that a man can force his will on his wife, but it is expected that a woman must submit to that will. Changing this trend of thinking will be

<sup>15</sup> Urvashi Prasad-“*National Family Health Survey underscores need of a serious discussion on marital rape issue*”, I.E., 2022. Available at- <https://indianexpress.com/article/gender/national-family-health-survey-underscores-need-for-serious-discussion-on-marital-rape/>.

<sup>16</sup> Ibid.





impossible as long as those who drafted the law, our parliamentarians, are unwilling to take on the issue, merely because marriage is a sacred institution that must be protected. As our country's female population is already in a precarious position, the notion of feminism is not only protecting them from male dominance and placing them on an equal footing, but also assisting them to achieve their objectives. As long as males are viewed as having the right to control a woman's body because she married them, this goal will be half-achieved in the long run.



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