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Criminalizing marital rape: An Indian perspective

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Abstract

The act of one spouse having non-consensual sexual relations with another, known as marital rape, has long been a prevalent yet underappreciated problem in Indian society. The prohibition of marital rape is still a controversial and unresolved issue in the Indian legal system, notwithstanding recent progressive legislative developments. This essay critically analyses the pressing necessity for marital rape to be made a crime in India, taking into account the effects it would have on social justice, human rights, and gender equality. Based on an extensive analysis of extant literature, legal statutes, and case studies, this paper investigates the legal, historical, and sociocultural elements that contribute to the continued occurrence of marital rape in India. To sum up, this essay argues that making marital rape a crime is a crucial step towards protecting married women's fundamental rights, combating gender-based violence, and promoting a fairer and more just society in India. It demands immediate legislative action, public discussions, and policy changes to end the culture of impunity that permeates society and holds married rapists accountable.

Keywords: Marital rape, domestic abuse, Indian rape laws, gender-based violence, human rights

1. Introduction

Because it is based on love, trust, and respect for one another, marriage is frequently seen as a holy institution. But the horrible crime of marital rape destroys the integrity of marriage for far too many women in India. India is still among the few democracies where marital rape is not expressly recognised as a crime, despite notable advancements in women's rights and legal changes. A type of sexual assault known as marital rape occurs when one partner coerces the other into doing sexual actions against their will. It takes place in the setting of a marriage or other close relationship and entails using physical force, pressure, or manipulation to get the victim to comply sexually.

Marital rape is acknowledged as a grave breach of human rights and a type of domestic abuse as it infringes on the victim's ability to agree to sexual activity and their bodily autonomy. From an Indian viewpoint, we shall examine the pressing and intricate matter of making marital rape a crime in this piece. We will look at the effects this type of gender-based violence has on the lives of several women across the nation as well as the historical, cultural, and legal aspects that have led to its continuation^[1].

In addition, we will examine the state of the law, public perceptions, and the difficulties in resolving this matter. Above all, we will emphasise the urgent need for legislative change in order to protect and deliver justice to victims of marital rape. By bringing attention to this important but frequently disregarded facet of gender-based violence, we hope to spark meaningful discussion and encourage meaningful action to protect everyone's fundamental right to bodily autonomy and dignity within the institution of marriage. In the quest of gender equality and justice in India, criminalising marital rape is becoming more and more clear as we traverse the complexity and sensitivities surrounding this problem. It is also a moral duty.

2. Prevalence of marital rape in India

Though underreporting and societal shame make it impossible to pinpoint the precise incidence, there is strong evidence that marital rape occurs often in India. Many Indian women have been victims of sexual abuse, including marital rape, perpetrated by their

¹ "Marital Rape: Consent, Marriage, and Social Change in Global Context" by Kersti Yllö and M. Gabriela Torres p. 105

spouses, according to studies and surveys. However, a lot of marital rape incidents in India remain unreported because of social and cultural issues, and victims frequently encounter obstacles while trying to get justice and help.

3. Historical perspective on Marital Rape laws in India

For a considerable amount of time, marital rape was not considered a criminal offence in India. Due in significant part to cultural and societal conventions that saw marriage as meaning lifelong agreement to sexual activity, marital rape was not criminalised in India in the past. Nonetheless, calls for the prosecution of marital rape have grown in number and intensity recently, and talks about changing laws and policies to deal with this problem have accelerated.

4. The need to criminalize marital rape in India

The acknowledgment of the basic rights of persons inside a marriage, such as the right to bodily autonomy and the freedom to refuse sexual activity, is the driving force behind India's urgent need to criminalise marital rape. India can significantly reduce gender-based violence and advance the safety and well-being of people in married partnerships by making marital rape a crime. This thesis statement highlights the need for legislative reforms to safeguard individual rights in marriages as well as the need of acknowledging and addressing the incidence of marital rape in India ^[2].

6. Understanding of Marital Rape

A. Distinction between rape and marital rape

The term "rape" refers to non-consensual sexual relations or sexual activities that are coerced, threatened, or used as leverage. As a subtype of rape, marital rape happens when one spouse engages in non-consensual sexual behaviour against the other in the setting of a marriage or other close relationship. The relationship between the offender and the victim distinguishes rape from marital rape, which takes place inside the context of a married relationship.

B. Impact of marital rape on victims

Victims of marital rape may experience severe and complex aftereffects. Marital rape victims may sustain bodily harm, psychological suffering, and emotional trauma. Long-term consequences of marital rape may also include harm to the victim's general wellbeing, sense of self, and mental health. Apart from the instant suffering resulting from the non-consensual sexual act, victims could encounter difficulties in obtaining assistance and justice because of societal disapproval, cultural standards, and obstacles in the legal framework.

C. Psychological and Emotional Consequences

Marital rape can have serious, long-lasting psychological and emotional repercussions. It is possible for victims to feel helpless, ashamed, guilty, and afraid. The trauma they experienced may also cause them to have anxiety, sadness, PTSD, and other mental health problems. In addition to causing long-term emotional scars and difficulties in reestablishing a feeling of security and self-worth, marital rape can weaken the victim's sense of safety and confidence in their married relationship ^[3].

D. Societal Attitudes and Stereotypes

Stereotypes and societal beliefs on marital rape might make victims' struggles worse. Cultural norms and false beliefs about sexual consent and marriage may play a role in the underreporting of marital rape and the failure to acknowledge the problem as a serious form of domestic abuse. Marital rape victims may run across scepticism, victim-blaming attitudes, and social pressure to keep quiet about their experiences. Furthermore, misconceptions regarding gender roles and marital duties might impede attempts to properly address the problem by normalising non-consensual sexual behaviour inside marriage.

Understanding the distinctions between rape and marital rape, recognising the impact of marital rape on victims, and addressing societal attitudes and stereotypes are crucial steps in raising awareness, supporting victims, and advocating for legal and social reforms to combat marital rape and protect the rights and well-being of individuals within marital relationships ^[4].

7. An Overview of the Legal Framework in India

A. Overview of Indian rape laws

The Indian Penal Code (IPC) is the main piece of law in India that deals with rape. The IPC's Section 375 describes what constitutes rape, including what constitutes sexual relations and activities performed on someone without their permission. Provisions pertinent to the prosecution of rape cases are also included in the Indian Evidence Act and the Code of Criminal Procedure.

B. Exception of marital rape under Section 375 of the Indian Penal Code

Section 375 of the Indian Penal Code provides an exemption for marital rape, which is one of the important features of Indian rape legislation. According to this exemption, a man's sexual relations or activities with his own wife are not regarded as rape as long as she is not younger than fifteen. This provision essentially shields non-consensual sex from prosecution as rape and legalises it in married relationships.

C. Criticism of the exception and its implications:

Human rights groups, legal experts, and women's rights organisations have strongly criticised the Indian Penal Code's Section 375 exemption for marital rape. Critics contend that the clause infringes on married women's autonomy and fundamental rights while fostering a climate of impunity for spousal sexual abuse. The exemption, it is said, maintains the idea that marriage entails lifelong agreement to sexual activity, regardless of the woman's wants, and ignores the agency and right to consent of married women.

D. International perspectives on marital rape laws:

Internationally, different jurisdictions handle marital rape in different ways. While some nations, like India, continue to have legal restrictions or exclusions pertaining to marital rape, many other nations have made it a crime and see it as a grave offence. Globally, there has been a recent movement to address spousal sexual assault through legal framework change and the recognition of marital rape as a crime. International human rights conventions, such the Convention on the Elimination of All Forms of

² "Sexual Violence and the Law in India" by Geetanjali Gangoli

³Ibid

Discrimination Against Women (CEDAW), place a strong emphasis on ending marital rape and giving married couples' members legal safeguards^[5].

In general, these features of the Indian legal system draw attention to the necessity of a thorough analysis and possible change in order to address the problem of marital rape and enhance the protection of people's rights and welfare in married relationships.

8. Socio-Cultural Factors

A. Patriarchal norms and gender inequality in India

Gender inequality and patriarchal standards have affected India, as they have many other civilizations. Power disparities have frequently been maintained by traditional gender roles, with males typically having more authority and influence within social and familial systems. This has led to the acceptance of marital rape as commonplace and the idea that a woman's agreement isn't necessarily required in a married relationship^[6].

B. Societal attitudes towards women's rights and autonomy

Divergent societal perspectives exist in India with regards to the autonomy and rights of women. Even while women's rights, such as legal safeguards and educational opportunities, have advanced, deeply rooted views and practices may nevertheless restrict women's autonomy, especially in the context of marriage. Women may find it more difficult to defend their right to bodily autonomy and to object to non-consensual sexual behaviour as a result.

C. Role of religion and traditional beliefs in perpetuating marital rape

Traditional values and religion may also contribute to the continuation of marital rape. Religious scriptures and customs can be interpreted in ways that support the oppression of women and perpetuate the imbalance of power in marriage. It is sometimes maintained that wives should acquiesce to their husbands' sexual appetites without inquiry, regardless of their own permission, by citing religious and cultural standards.

D. Impact of societal stigma on reporting marital rape

For those who have been victims of marital rape, societal stigma related to matters of sexuality, marriage, and domestic abuse can pose serious obstacles. If victims share their stories, they might worry about being shunned by society, being held accountable, or losing the support of their families and communities. This stigmatisation can result in underreporting and a reluctance to seek support services or legal action, which keeps offenders in a cycle of silence and impunity.

To create a more just and supportive environment for survivors of marital rape, it is imperative to address socio-cultural factors such as patriarchal norms, societal attitudes towards women's rights, the influence of religion and traditional beliefs, and the impact of societal stigma on reporting marital rape. It calls for actions to question deeply held convictions, advance gender parity, and create channels through which survivors can seek assistance and justice without worrying about societal censure or retaliation.

⁵"Gender, Sexuality, and Colonial Modernities" edited by Antoinette Burton

⁶ Marital Rape: A Non-Criminalized Offence in India" by Dr. Aparna Bhat

9. The Criminalization of Marital Rape- Challenges, and Considerations

A. Voices advocating for criminalization of marital rape:

Many supporters of criminalising marital rape in India have voiced their support, including human rights activists, lawyers, women's rights organisations, and concerned citizens. These speakers stress the significance of addressing gender-based violence, recognising individual rights in marriage partnerships, and providing survivors of marital rape with legal protection. They frequently draw attention to the core ideas of gender equality, consent, and physical autonomy.

B. Challenges and opposition to changing the law

A number of obstacles and voices are opposed to making marital rape a crime under the new legislation. Certain traditionalists and conservative factions can be against these modifications, pointing to cultural or religious grounds and contending that conjugal relationships need to be shielded from legal action. Concerns concerning possible legal abuse or difficulties with evidence standards and enforcement can also exist^[7].

C. Political and religious considerations

The discussion over making marital rape a crime is heavily influenced by political and religious factors. In addition to navigating the many views and interests that exist within society, religious leaders and institutions have the power to influence public opinion and policy choices. It is a difficult task to strike a balance between these factors and the requirement to respect human rights and shield people from gender-based violence.

D. Impact of public awareness campaigns and movements

Campaigns for public awareness and social movements are essential in influencing public opinion and legislation around the problem of marital rape. These programmes can dispel myths and prejudices regarding marital rape, increase public understanding of its frequency and effects, and galvanise support for legislative changes. They can also provide survivors a forum to talk about their experiences and push for reform, which will promote compassion and understanding in the larger society^[8].

There are several obstacles and elements to take into account while advocating for the criminalization of marital rape, such as resistance based on political, religious, and cultural grounds. Social movements and public awareness campaigns have the power to change people's perceptions, question accepted wisdom, and bolster the case for legislative changes. Engaging with a variety of stakeholders, encouraging educated discussion, and working towards a legislative framework that protects the rights and dignity of every person, regardless of marital status, are all necessary to address these challenges.

10. Human Rights and Legal Obligations:

A. India's international commitments and human rights obligations

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which requires

⁷Ibid

⁸Ibid

states to take action to end discrimination against women in all areas, including addressing gender-based violence, is one of the international human rights conventions and treaties that India is a signatory to. Other international human rights agreements that underscore the need of shielding people from all types of abuse, including marital rape, and guaranteeing equal rights and safeguards for women bind India as well.

B. Violation of women's fundamental rights

It is against women's fundamental rights, such as the right to equality before the law, the right to be free from violence and discrimination, and the right to bodily integrity, because marital rape is not criminalised in India. Human rights and gender equality are fundamentally undermined by the absence of legal recourse for survivors of marital rape.

C. The need for legal reform to ensure gender equality and justice

Legal change is necessary to make marital rape a crime in India in order to guarantee women's justice and gender equality. Reforming in this way would show support for human rights principles and combat gender-based violence. It would also foster a more just and equitable society by giving survivors of marital rape access to support services, legal options, and channels for pursuing justice^[9].

D. Impact of criminalizing marital rape on India's global image

Making marital rape a crime in India will probably improve the nation's standing abroad by demonstrating a dedication to promoting gender equality, human rights, and the defence of people against violence based on their gender. It would serve as evidence of India's adherence to global human rights norms and its commitment to tackling social justice and gender parity concerns. A step like this might improve India's reputation as a nation that values its residents' rights and well-being abroad.

In addition to being a question of internal policy, the outlawing of marital rape in India has significant ramifications for gender equality, human rights, and India's reputation abroad. Upholding fundamental rights and exhibiting a commitment to justice and equality need action to amend laws and offer legal safeguards for survivors of marital rape.

11. Review of proposed legislative changes and policy recommendations

Legislation pertaining to marital rape must be continuously reviewed and updated to guarantee that victims are adequately protected. This might entail improving victim legal remedies, updating statutes of limitations, and reassessing what constitutes rape in the context of marriage. Any legal gaps should be closed, and proposals for policy should make sure that those who violate the law are held responsible for their conduct.

A. Importance of comprehensive support services for victims

For victims of marital rape to heal and move on, comprehensive support services are vital. This covers having access to secure housing, health care, legal support,

and counselling. The necessity of these services being easily accessible and customised to meet the unique requirements of victims should be emphasised in policy. Support groups and shelters that offer these essential services ought to receive enough money and resources.

B. Role of law enforcement and the judiciary in addressing marital rape cases

In handling incidents of marital rape, the courts and law enforcement are essential. To handle these matters with tact and efficiency, law enforcement officials and legal experts must get specialised training. Policies should also support the comprehensive investigation of claims, the punishment of offenders, and the equitable and unbiased treatment of victims. There should be precise rules and procedures in place to guarantee uniformity in the way that cases of marital rape are handled in various legal systems^[10].

C. Public education and awareness programs

Programmes for public education and awareness have a critical role in influencing public perceptions of marital rape and encouraging an atmosphere of consent and respect in close relationships. The creation and execution of educational programmes targeted at avoiding marital rape, dispelling false preconceptions, and promoting positive relationship dynamics should be encouraged by policy. To reach a large audience and encourage in-depth discussions on the topic, these programmes might be directed towards educational institutions, neighbourhoods, businesses, and the media.

A multipronged strategy is needed to address marital rape, including public education and awareness campaigns, extensive support services, efficient law enforcement and judicial responses, and legislative reforms. Societies may fight marital rape and provide victims with more significant and effective support by incorporating these components into policy efforts.

12. Addressing concerns about false accusations and misuse of the law

Talks concerning marital rape frequently involve worries about unfounded allegations and the use of the law improperly. It's critical to address these worries by highlighting the value of the presumption of innocence and due process. The main goal of policy should be to guarantee that legal systems have mechanisms in place to stop malicious claims from being made, such as thorough investigative procedures and penalties for making false allegations. Furthermore, in order to guarantee justice and fairness, assistance must be given to both the guilty and the victims.

A. Engaging with religious and community leaders to change attitudes

Leaders in the community and religion frequently have a big impact on cultural standards and attitudes. It is imperative to interact with these leaders in order to shift perceptions of marital rape. Initiatives involving religious and community leaders to spread themes of respect, consent, and the significance of addressing marital rape should be supported by policy. Creating alliances with these powerful people can promote constructive social and cultural change, increasing victim support and awareness^[11].

⁹"Domestic Violence and the Law in Colonial and Postcolonial Africa" edited by Emily S. Burrill, Richard L. Roberts, and Elizabeth Thornberry

¹⁰Ibid

¹¹Ibid

B. Implementing effective enforcement mechanisms

A thorough strategy is necessary for the implementation of efficient enforcement systems. This entails educating judges, law enforcement officers, and legal experts on how to properly and sensitively handle instances involving marital rape. The distribution of funds for these institutions' internal training and capacity building should be given top priority by policy. Additionally, clear standards and guidelines should be created to guarantee that enforcement methods are regularly utilised and that criminals are held accountable for their acts.

C. Addressing cultural and institutional barriers to change

In order to effectively address marital rape, cultural and institutional impediments to change may pose substantial hurdles. Cultural sensitivity and understanding should be encouraged by policy initiatives, and institutional behaviours that support these obstacles should be changed as well. This might entail advocating for women's rights, encouraging projects that question gender stereotypes, and making sure that laws and regulations follow international human rights standards. Over time, coordination across many societal sectors and consistent effort are needed to address institutional and cultural hurdles.

13. Suggestions and Conclusion

A. Recap of the urgency to criminalize marital rape in India

It is imperative that marital rape be made a crime in India. Even if there has been progress in other areas of women's rights and gender equality, the fact that marital rape is not specifically criminalised by law continues to be a severe injustice against countless women. Recognising the gravity of the situation and acting swiftly are essential to ending this type of gender-based violence.

B. Call to action for legal reform and societal change

Addressing the problem of marital rape requires a call to action for social and legal change. In addition to pushing for larger cultural change through awareness campaigns, educational initiatives, and the encouragement of respectful and egalitarian attitudes within intimate relationships, this request is made to politicians to adopt specific legislation that criminalises marital rape.

C. The potential impact on women's rights and gender equality

Making marital rape a crime in India will have a significant effect on women's rights and gender equality. It would send a strong message that women are entitled to bodily autonomy and that it is inappropriate for them to engage in sexual abuse while married. This legislative change has the ability to upend damaging gender stereotypes, empower women, and promote justice and equity in society.

D. Future outlook and the path forward for change

Future prospects for combating marital rape in India depend on persistent lobbying, legislative change, and social change. Maintaining the momentum for change, including a variety of stakeholders, and standing out for the rights and dignity of every person are essential. The way ahead entails a multipronged strategy that includes legal action, law

enforcement, victim care, and the development of a consenting, respectful, and gender-equal culture.

To sum up, criminalising marital rape in India is a critical step in defending women's rights and advancing gender equality. To bring about long-lasting change, legislators, civic society, and the larger community must work together. We may fight to create a society where everyone is treated with dignity and respect by acknowledging the importance of this issue, advocating for legal reform and cultural change, comprehending the possible impact on women's rights and gender equality, and laying out a plan of action.

14. Author statement

All authors contributed equally to this work.

15. Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

15. Data availability

Data will be made available on request.

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