

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 6

2020

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Spousal Rape: A Silent and Dreadful Mourn

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ABSTRACT

This article deals with a crucial issue of Spousal Rape prevailing in society. The focus is to give a total framework of spousal rape and how women are losing their sense of pride and nobility. The authors want to accentuate on unveiling the veil of the Legislature that how they have completely ignored the ambit of spousal rape from its framework. It further enlightens how lethargic and baffling our legislature is working for making spousal rape an offence in India. The authors want to draw the attention of society towards how the fundamental rights of women are violated when it comes to the interests and protection of their rights. It also lays down a glimpse on the notion of the right to privacy as to how women are becoming the victim of unwanted and dissenting sexual relationships with their husbands. It is pertinent to mention that due to spousal rape, the women are prone to diseases that may be life-taking as well.

I. INTRODUCTION

Rape, the gravest kind of sexual violence against women that can be heard on an everyday schedule. Everyone is familiar that raping a girl is a crime yet it occurs on a routine, even on an hourly premise in India. Section 375 of the Indian Penal Code, 1860 clearly defines Rape but its exception clause (2) eliminates the provision of spousal rape in it if the girl is above the age of 15 years.³ With regards to Indian tradition in the modern era also, women are considered as the property of the spouse and are compelled to have intimate relations within four walls of the matrimonial home. Further, if we talk about consent, women are forced to have sexual relations despite their will which makes the provision “right of bodily self-determination” under the Article 21 of the Indian Constitution null and void. Also, this illicit kind of behaviour is prevalent in all the religions of the Indian society which automatically degrades the existence of women in the country. Spousal Rape or intimate assault at all might be named as it legitimately it must be considered as the offence only. By not criminalizing the spousal rape in the nation, it tends to be deciphered that the women give their spouses a deep-rooted permit and a lifelong license to have sexual intercourse regardless of their desire.

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³ The Indian Penal Code, 1860, §375.

If we look at the statistical data of the country, the women having the age of 15-49 years have been a victim of a spousal rape.⁴ Even though during the occasions have passed, our legislation has outlined different enactments for securing the interests of women like The Protection of Women from Domestic Violence Act, 2005, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Dowry Prohibition Act, 1961, etc, yet at the same time, no arrangement for spousal rape exists in India.

II. LETHARGIC BEHAVIOUR OF THE INDIAN JUDICIAL SYSTEM

The lethargic behaviour can be easily seen through the various instances where it is evidently proved that the government has failed to take effective steps to make spousal rape as an offence. Initially in March 2000, the Hon'ble Supreme Court of India gave direction to the Law Commission to make amendments in its 172nd report for the offence of Rape.⁵ This matter came into light when a writ petition was filed by a NGO "Sakshi" but the matter was ignored and no effective steps were taken by the commission. It's not a hidden fact that women are still fighting for the rights and to protect their interests in society but the legislature has not yet come up with any stringent provisions for the act of spousal rape in the country.

In India, after the barbarous Delhi Gang Rape (Nirbhaya Case), the legislation sets up the Justice J.S Verma (Retd.) Committee to acquire changes in criminal law.⁶ The report by the Committee set forward that "the exemption for the rape inside marriage ought to be taken out" and rape ought to be treated as rape no special case ought to be given. Yet at the same time, after passing the Criminal Law Amendment Act, 2015 the legislation ignored the proposal of the panel to make spousal rape as a criminal offence. This unprecedented kind of sexual violence towards companion, in any case, is as yet an unenacted part of this report. It's very heart-whipping that India is not a part of 100 countries where the spousal rape has been condemned by their respective governments.⁷

⁴Urvashi Prasad, National Family Health Survey underscores need for serious discussion on marital rape .The Indian Express, (March 15,2018, 9:12 AM), <https://indianexpress.com/article/gender/national-family-health-survey-underscores-need-for-serious-discussion-on-marital-rape/> .

⁵Law Commission of India, 172nd Law Commission Report, Review of Rape Laws, (March 2000) available at <https://lawcommissionofindia.nic.in/rapelaws.htm>

⁶ Justice Verma Committee Report on Anti-Rape Law, 2013 *available at* <https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf> .

⁷Anirudh Pratap Singh, The impunity of marital rape, The Indian Express, (Dec 20, 2020 ,10:37 PM) <https://indianexpress.com/article/opinion/columns/the-impunity-of-marital-rape/> .

III. FUNDAMENTAL REASONS BEHIND THIS ILLEGITIMATE ACT OF SPOUSAL RAPE

A few reasons which can be distinguished for not criminalizing spousal rape as an offence is the obsolete IPC, an unbending patriarchy culture, and where marriage is viewed as the most sacrosanct one. Due to the above-mentioned reasons, the woman goes into a silent trauma on a regular schedule. Being the silent victim, it influences her mind in each perspective emotionally, physically, and psychologically in her matrimonial home. A spouse having intercourse without the assent of her significant other is acceptable to the general public however individuals in India don't consider how mentally a woman must be affected when this wrongful act is done by her husband only where marriages are considered to be the sacred ones. Some reasons which can be outlined which are evidently violating the interests of the women are as follows:

- *Right to Health:* - Our Constitution of India ensures and guarantees every citizen of the country a fundamental right to life and personal liberty as enshrined under Article 21. But still, the women in India are deprived of this right as the wrongful act of spousal rape impacts the mental health and therefore making her life vulnerable to live. Despite mental health, the physical health of the woman is also at severe risk when she is forced to maintain dissenting sexual relations with her husband. If a forced intercourse is done on regular basis then she may get infected with Sexually Transmitted Diseases (STDs) which can either have multiple consequences on her body or may become a life-taking disease.⁸
- *Right to Privacy:* - On account of Justice K.S. Puttaswamy (Retd) v. Union of India⁹, a landmark judgment was delivered by the Hon'ble Supreme Court of India unanimously by nine judges on 24th August 2017 which declared the Right to Privacy as a fundamental right in India. This privilege can be called a subordinate of Article 14 and 21 of the Indian Constitution as this privilege centres around the person's entitlement to life and freedom as protection. After this landmark judgment, each person of the country had an unavoidable ideal for the decisions that he/she makes which includes the assent of sexual connections as well. Be that as it may, as referenced above women are still the victim of a spousal rape in the nation, and husbands are allowed to treat their wives as per their sexual desires.

⁸Kathryn A. Brookmeyer & Oscar Beltran & Neetu Abad, Understanding the effects of Forced Sex on Sexually Transmitted Disease Acquisition and Sexually Transmitted Disease Case: Finding from the National Survey of Family Growth (2011-2013), Oct; 44(10): Sexually Transmitted Disease, 613-618, (2017).

⁹ (2017) 10 S.C.C 1 (India).

- *Financial Dependence and psychological condition of women:-* Another reality is additionally not deniable that the idea of spousal rape is likewise muddled because the Indian women are reliant on their husband for various factors like sustaining family loyalty, financially dependence on the husband, for the welfare and safeguarding the future of her children or inability to leave the matrimonial relations, and in that situation, women never see herself as a victim of the illegitimate and heinous act and unfortunately, therefore, the spousal rape is highly under-reported crimes in India.

JUXTAPOSITION WITH OTHER COUNTRIES:

If we take a glimpse at the arrangements of different nations for the illegitimate act of spousal rape, then they have either criminalized spousal rape as an offence or revoked spousal rape exemptions in their laws. Nations like the UK, USA, France, Sweden, Taiwan, Germany, Hongkong, Italy, and a lot more incorporated spousal rape as an offence.¹⁰ As of late in the year 2005, Turkey criminalized the spousal rape, and later in the year 2007, same was done by Mauritius and Thailand. But, in India, the main provisions accessible to women for safeguarding their rights and interests are available only in the form of filing the case under The Protection of Women from Domestic Violence Act, 2005 or Section 498A of IPC.

CONCLUSION:

Unfortunately, a very disheartening situation is prevailing in our country as the Supreme law of the country; the Indian Constitution which guarantees the Right to Equality has entirely gone into vain as the women are not safeguarded even in their matrimonial homes. The question of law is to date debatable for criminalizing conjugal assault as an offence. It's not only the legislative side that should be blamed but the customs and traditions also play a major impact in not criminalizing it. The persistent and brutal exemption laid under Section 375 of the Indian Penal Code, 1860 is entirely a disrespect towards the woman's dignity and her self-respect. The criminal law supports the most exceedingly terrible act which a woman suffers. But, according to our customs, values, and traditions marriage is to be considered as the most sacred one which automatically leads to considering women as a property of their husband. In accordance with the case law held by the Hon'ble Supreme Court of India where the Court held that "if any arbitrary law or excessively invades the rights it cannot be held

¹⁰ Satya Prakash, SC in Dilemma over marital rape, The Tribune (July 08, 2019 , 06:44 AM),<https://www.tribuneindia.com/news/archive/nation/sc-in-dilemma-over-marital-rape-798695> .

reasonable.”¹¹ It can be easily interpreted that if any law or any provision is arbitrary in nature or is giving any excess rights to the citizen, then that law or provision will be termed as unreasonable. Similarly, the husband takes undue advantage of their rights and ill-treat their wives according to their needs and desires, therefore the wrongful or illegitimate or the brutal act of spousal rape should be criminalized in India so that the basic essence of womanhood is retained in the country and the pride of being a woman is sustained.

¹¹ Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh and Ors.1954 AIR 224, (India).