

Marital Rape and the Aspect of Consent in A Marital Relationship

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Abstract: *Marital rape represents a serious violation of a woman's bodily autonomy and dignity, yet it continues to remain outside the ambit of criminal law in India due to the marital rape exception under Section 375 of the Indian Penal Code. The assumption of implied consent within marriage undermines the fundamental rights guaranteed under the Constitution. This paper examines the concept of consent in marital relationships, highlights the physical and psychological consequences of marital rape, and analyzes the legal framework in India. It further explores judicial interpretations and emphasizes the urgent need for legal reform. The study concludes that marriage cannot be treated as perpetual consent and that criminalization of marital rape is essential to ensure gender justice and equality*

Keywords: Marital Rape, Consent, Bodily Autonomy, Gender Justice, Indian Penal Code, Domestic Violence, Fundamental Rights, Sexual Violence

I. INTRODUCTION

Marriage in Indian society has traditionally been regarded as a sacred institution, often placing the husband in a dominant role and the wife in a subordinate position. Within this framework, the concept of consent has historically been ignored, leading to the belief that a wife provides irrevocable consent to sexual relations after marriage. Marital rape, defined as non-consensual sexual intercourse by a husband with his wife, challenges this outdated notion. It is not merely a private issue but a violation of fundamental human rights, including dignity, autonomy, and personal liberty. The persistence of the marital rape exception reflects deep-rooted patriarchal norms and gender inequality. In recent years, the debate around marital rape has gained importance due to evolving constitutional values and global human rights standards. However, resistance to its criminalization continues, often justified in the name of preserving the institution of marriage.

HISTORICAL BACKGROUND

The concept of marital rape exemption originates from English common law, particularly from the doctrine propounded by Sir Matthew Hale in the 17th century, which stated that a husband cannot be guilty of raping his wife because she has given irrevocable consent upon marriage.

This doctrine was incorporated into Indian law during the colonial period and continues to exist in the form of Exception 2 to Section 375 of the Indian Penal Code. Historically, women were considered the property of their husbands, and their autonomy was not recognized.

Over time, many countries have abolished this exception and criminalized marital rape, recognizing it as a violation of human rights. However, India still retains this outdated provision despite constitutional guarantees of equality and dignity.

EFFECTS OF MARITAL RAPE

Marital rape has severe and long-lasting consequences, often more traumatic because the perpetrator is a trusted partner.



(A) Physical Effects

- Injuries to private organs
- Bruises, fractures, torn muscles, and lacerations
- Fatigue and bodily pain
- Forced pregnancies, miscarriages, and abortions
- Risk of sexually transmitted infections, including HIV
- Women may also suffer from long-term reproductive health issues and complications arising from repeated abuse.

(B) Psychological Effects

- Shock, fear, and emotional trauma
- Anxiety, depression, and stress
- Low self-esteem and loss of confidence
- Suicidal tendencies and panic disorders
- Post-Traumatic Stress Disorder (PTSD)

The psychological impact is often more severe than physical injuries, as the abuse occurs within an intimate relationship, leading to deep emotional scars.

STATUS OF MARITAL RAPE IN INDIA

Section 375 of the Indian Penal Code defines rape as non-consensual sexual intercourse. However, Exception 2 to Section 375 exempts sexual intercourse by a husband with his wife (above a certain age) from being considered rape. This effectively legalizes marital rape in India. The law assumes that a wife gives perpetual consent to sexual relations after marriage. This exception contradicts Article 21 of the Constitution, which guarantees the right to life, personal liberty, and dignity. It also violates Article 14 (Equality) and Article 19 (Freedom). Thus, there exists a clear conflict between statutory law and constitutional principles.

JUDICIAL APPROACH

The Indian judiciary has increasingly acknowledged the importance of consent, dignity, and bodily autonomy within marriage, even though marital rape is not yet fully criminalized. In *Independent Thought v. Union of India* (2017), the Supreme Court read down Exception 2 to Section 375 of the IPC by holding that sexual intercourse with a minor wife (below 18 years) amounts to rape, thereby limiting the scope of the marital rape exception. This judgment marked a significant step toward recognizing the rights of married women.

Similarly, in *Justice K.S. Puttaswamy v. Union of India* (2017), the Court recognized the right to privacy as a fundamental right under Article 21, which includes bodily autonomy and decisional freedom in intimate matters. In *Joseph Shine v. Union of India* (2018), while striking down the adultery law, the Court emphasized equality, dignity, and individual autonomy within marriage, rejecting the notion of women as property of their husbands.

Courts have also stressed the importance of dignity and protection from abuse. In *Suchita Srivastava v. Chandigarh Administration* (2009), reproductive autonomy was recognized as a dimension of personal liberty. However, in recent proceedings such as the Delhi High Court judgment on marital rape (2022), a split verdict highlighted the continuing judicial divide on criminalization.

Thus, while the judiciary has progressively interpreted constitutional rights to support women's autonomy and dignity, the absence of explicit criminalization of marital rape continues to create a gap between constitutional principles and statutory law.



II. CONCLUSION

The marital rape exception represents a significant failure of the legal system to protect women's rights. Marriage cannot be treated as a license for sexual violence, nor can it override the requirement of consent.

A progressive legal system must recognize that consent is continuous and essential in all relationships. Criminalizing marital rape is not an attack on marriage but a necessary step toward ensuring dignity, equality, and justice.

SUGGESTIONS

There is an urgent need to criminalize marital rape in India by removing Exception 2 to Section 375 of the IPC, as no relationship should override the principle of consent. Awareness programs must be conducted to educate society that consent is essential even within marriage, and that forced sexual relations violate fundamental rights. The judiciary and law enforcement agencies should be sensitized to handle such cases with empathy and a gender-just approach. Strong support systems, including medical, psychological, and legal aid, must be made accessible to victims. Additionally, the government should strengthen existing laws on domestic violence to include sexual abuse more explicitly. Social attitudes rooted in patriarchy must be challenged through education and media. Proper implementation of laws is equally important to ensure justice. Policymakers should also study international frameworks where marital rape is criminalized. Overall, a combination of legal reform, awareness, and societal change is necessary to address this issue effectively.

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