

Marital Rape in the #MeToo Era: Quest for Legal Reform

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The article explains about the relationship between marital rape and #MeToo in India. The socio-legal dimension of gender-based violence highlights the success of the #MeToo campaign in breaking the silence surrounding sexual abuse and harassment. However, marital rape is not recognized as a crime under Indian law, reflecting the country's entrenched patriarchal norms. The influence of the social system has also been explored in this article. Additionally, it considers how the #MeToo movement has indirectly drawn attention to marital rape by emphasizing issues of consent and bodily autonomy. This article serves as a plea for women and presents a transactional perspective, concluding with the necessity for legal reform, social change (potentially involving religious leaders), and more interdisciplinary approaches to the issues of marital rape and gender-based violence in India.

Keywords: Marital rape, #MeToo movement, gender justice, sexual violence, consent, patriarchal norms, Indian Penal Code, domestic violence, legal reform, social stigma, gender equality, women's rights.

1. Introduction

Some contentious topics related to marriage, including those surrounding marital rape and the #MeToo movement, have been discussed in detail in India recently, shedding light on the intersectionality of gender, law, and society. As the #MeToo movement encourages women to file complaints about sexual harassment and abuse, the ongoing lack of legal recognition for marital rape in India reveals much about the deeply entrenched patriarchal norms that continue to govern Indian society. This article examines the socio-legal dimensions of these two interconnected issues in the context of India.

The Legal Gap in India

Marital rape is defined as non-consensual sexual intercourse by a husband against his wife. In 22 other countries, including India, marital rape is not a crime, as it is elsewhere in the world, where many countries have banned it as a violation of a woman's bodily autonomy

and human rights. Yet India is one of only a handful of countries that don't explicitly make marital rape a crime. This exemption is based on Exception 2 to Section 375 of the Indian Penal Code now the Bharatiya Nyaya Sanhita (BNS) which proclaims that sexual intercourse by a man with his wife, who is not under 18 years of age, is not rape.

Civil and Societal Pressures

Patriarchal legacy is the exemption that embodies colonial-era laws that treated women as the property of their husbands. This age-old belief survives in the Indian context even today, where marriage is assumed to act as an unremitting mandate for sexual relations. Survivors of marital rape face a dire shortage of legal recourse. They can bring charges under other sections, like domestic violence or cruelty (Section 498A of the IPC), but these laws do not sufficiently capture the specific trauma accompanying sexual violence in marriage. A section of the judiciary has recognized the need to issue legislation against marital rape, but judicial deference to the legislature prevails on this issue. In 2022, the Delhi High Court (DHC) gave a split verdict on the petitions challenging the marital rape exception, setting progress back yet again. For a lot of women, there's social stigma that comes with discussing marital rape, such as fear of being ostracized or blamed, or fear of the marriage falling apart. This becomes difficult due to the lack of awareness and education about consent.

The #MeToo Movement: A Catalyst for Change

The #MeToo movement, which took off in India in 2018, has acted as a powerful corrective tool to end this omnipresent culture of silence around sexual harassment and abuse. It has inspired women from all walks of life, celebrities, journalists, students and professionals, need to share their own experiences of sexual misconduct, often by men in positions of authority. At the same time, the movement has helped give a voice to women who have endured abuse, leading to solidarity and an encouragement for others to come forward. It has also shown a light on the issues of sexual harassment in workplaces, homes and public spaces.

Several prominent cases have resulted in the resignation or firing of accused people, a potential sign of a shift toward holding aggressors accountable. But the movement has also faced criticism for a lack of due process and legal rigor. The #MeToo movement has brought renewed focus on the legal structures around sexual harassment. It has also highlighted how existing laws, such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, fall short. The movement has pushed for changes in how people think about gender roles, sex and power, harassment and a range of related issues. It has also laid the deep-seated misogyny and victim-blaming that pervade Indian society.

Marriages make married women susceptible to sexual assault. It is the most respected social institution in India. The notion about marriage is that the wife has to be passive and the husband is the one who is active and dominating. It is this milieu that creates the entitlement that men can have sex, with or without consent. As stated before, the prevalent perpetrators of marital rape are the current husbands of women who are married. In India, 14.1% of women agree that a husband is permitted to beat his wife if she refuses to have sex. Moreover, offenders commonly state that they are driven by a feeling of sexual entitlement instead of sexual gratification. This acceptance is part of the reason why marital rape is not defined as a crime in India. Women cannot approach the courts, which leaves them wholly unprotected.

The highest incidence of marital rape (13.1%) was among adolescent brides (ages 15-19), likely because child marriage is still a major issue; 47% of women were married by age 18.

Among the highest rates of sexual assault is that of divorced and abandoned women i.e 24.6% and this is partly because of the gender imbalance that exists in marriage. If in marriage economic power is in the hands of men, then in the cases of abandonment, the abandoned women is totally dependent on their husbands. Though by a legal reform in 2005 women are allowed to own property, they are still often left with little in the way of property and financial aid. These women struggle to survive in extreme poverty. The stigma around abandonment and divorce makes matters worse for them. Most are out of the labour force; 41.5% report having no income. Among those who do find jobs, most earn so little that they revert to their maternal homes, but some are “castaways,” rejected by their families and “abandoned” to survive off their little incomes. Moreover, 85.6% of them are parents, placing an even bigger burden on already scarce resources. These are major factors making divorced and abandoned women particularly prey to sexual assault. Their exposure to social violence is low, their financial backing is not stable, and they often embark alone and do not have family support (as well as live in poor cities).

Marital Rape in #MeToo

The hashtag movement, #MeToo, has centred around public and professional sexual harassment, but it has also shed light on marital rape. The movements focussed on consent and bodily autonomy and highlighted the hypocrisy of a legal system that offers little protection to women in the traditional confines of marriage. Both marital rape and the #MeToo movement are tied to issues of consent. The awareness raised in the movement has laid the groundwork to fight the marital rape exception. #MeToo movement has empowered women to refuse patriarchal compliance and demand justice. It is needed to help fight against marital rape since it shatters the false idea that being married overrides the necessity of consent.

Activists and organizations have taken the momentum of the #MeToo movement to call for the criminalization of marital rape. They argue that the movement's call for accountability should extend into the intimate sphere of marriage. The #MeToo movement, which gained international traction in 2017, has been a pivotal societal campaign against sexual harassment and abuse. It has indirectly highlighted the issue of marital rape in India by raising awareness of the universality of sexual violence, underscoring consent as an inviolable principle, dismantling the silence surrounding abuse in private spheres, contesting patriarchal norms, establishing a platform for advocacy, fostering intersectional discussions, and prevailing in media and public discourse.

The movement has underscored that sexual violence is not limited to public settings or workplaces but is prevalent in all areas of life, including the private sphere of marriage. The movement has illuminated that sexual violence frequently transpires within intimate relationships, including marriages, by urging women to disclose their experiences of abuse. This has generated discussions over the absence of legal safeguards for women subjected to non-consensual sexual acts within marriage.

A fundamental principle of the #MeToo movement is the necessity of consent, which must be explicit, voluntary, and continuous, irrespective of the nature of the relationship between

the parties involved. This principle directly questions the antiquated belief that marriage entails irrevocable permission to sexual relations. By positioning consent as a fundamental right, the movement has highlighted the hypocrisy of Indian laws that exclude marital rape from prosecution.

The #MeToo movement has enabled women to voice their experiences of abuse, even in contexts usually deemed "private" or "sacred," such as marriage. This has facilitated the normalization of discourse surrounding marital rape, a topic that has historically been taboo in Indian society. The movement has confronted deeply rooted patriarchal practices that sustain gender inequity and violence against women. By interrogating power relations and demanding accountability from abusers, the movement has implicitly challenged the patriarchal frameworks that facilitate marital rape.

The #MeToo movement has impacted judicial and legislative discourse around gender-based violence, with prominent cases and social media discussions compelling society to acknowledge the uncomfortable realities of sexual abuse, including within marriages. This has resulted in heightened reporting and understanding of marital rape, despite the continued lack of legal recognition.

The international scope of the #MeToo movement has fostered solidarity among women globally, with Indian women finding inspiration in the movement's achievements in nations where marital rape has been criminalized and survivors have been emboldened to voice their experiences. This international viewpoint has strengthened the call for analogous legislative and social reforms in India.

The #MeToo movement in India encounters numerous socio-legal obstacles in tackling marital rape cases. The "marital rape exception" under Section 375 of the Indian Penal Code, which excludes sexual intercourse between spouses from the definition of rape, constitutes a substantial impediment to justice. This matter remains unresolved at the Supreme Court level, resulting in legal ambiguity.

Sociological norms and stigma frequently silence victims, as the notion of marital rape conflicts with conventional perceptions of a wife's obligations to her husband. Victims encounter significant social stigma, humiliation, and fear of ostracism, hindering their willingness to disclose their experiences. Familial pressure and the aspiration to maintain the family's "honour" exacerbate these difficulties. Establishing evidence of marital rape is particularly difficult, as it frequently transpires in the seclusion of the house, devoid of witnesses. Demonstrating the absence of consent in a marital relationship can be intricate, as societal norms and power dynamics may obscure the distinctions.

Many women in India, particularly in rural areas, face limited awareness and access to justice. The #MeToo movement's focus on public shaming and social accountability may be less effective for marital rape, where the dynamics are often complex and deeply personal. Institutional barriers, such as police and judicial insensitivity, can discourage victims from seeking justice. The combination of legal loopholes entrenched social norms, and the practical difficulties of proving marital rape poses a significant challenge.

The Way Forward

The Indian government must take steps to criminalise marital rape so the law reflects

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constitutional principles of equality and dignity. This needs to be done by amending Section 375 of the IPC to remove the exception of marital rape. Social change is needed to fight against the stigma of marital rape and sexual harassment. It is essential to build educational campaigns around consent, gender equality, and women's rights. Survivors of marital rape and sexual harassment need to devote their resources to inform society about the need to have robust support systems in place, such as counselling, legal aid, and safe spaces. The government should be a partner with civil society in delivering these resources. There is a need for the judiciary to actively interpret laws from a gender justice perspective. Progressive judgments can create precedent in future cases and impact legislative action.

The #MeToo movement has had a deep impact on the global conversation around sexual violence, including in India, and has indirectly made the issue of marital rape more visible. As a result, the movement opened a channel for survivors to share their experiences, fostering solidarity and breaking the silence surrounding sexual harassment and assault. In India, #MeToo was an accelerant for active discussion on sexual harassment in various environments and challenged the culture of silence and victim-blaming that often prevents survivors from coming forward.

By highlighting the statistics on sexual assault and encouraging conversations on power and lack of consent in marital relationships, the movement indirectly raised awareness of marital rape. In India, the legal and social facets of marital rape are complicated and characterized by ongoing debates around exceptions to the rape laws that provide certain protections to spouses. Thirty percent of the women experienced all 3 forms of abuse. Women who reported sexual abuse, and experienced forced attempts to have sex were 28 out of 83 reported, actually having sex i.e., marital rape were 24 females out of 83 reported and forced to have sex with others by their husbands were 13 out of 83 reported.

The social stigma surrounding the crime of marital rape is so immense that the crime itself remains cloaked in secrecy. Many women facing marital rape are compelled to believe they deserve it, and most are too embarrassed to talk about the crime, let alone report it due to conventional patriarchal values and inability to view marriage as an institution of unquestioned subservience. Many survivors feel compelled to stay silent due to fear of being shunned and also the shame that they believe would follow their family and lack of support. Then, there's the widespread idea that a wife is presumed to have consented to sex as part of the deal when she marries which makes things worse.

Testimonies of survivors are crucial in challenging these societal norms and shedding light on the truths behind marital rape. It is through their stories, that survivors can illuminate the issue and break the stigma attached. Such activism plays a vital role in increasing awareness, as it is shown in practices such as #metoo. It has made an impact and shown that knowledge can be spread through digital platforms.

2. Conclusion

Sexual violence, particularly marital rape, and the #MeToo movement is an intersection of two critical mass movements that represent the battle for gender justice in the country. The #MeToo movement has led to incredible change in the pursuit of justice against sexual

predators, but the archaic legal loophole still allows for marital rape to go unpunished, highlighting the dire need for comprehensive reform. To combat these factors, a multi-faceted approach to legal, social, and cultural change is required. For India to achieve a fair and egalitarian society, it needs to acknowledge and confront the deep-rooted inequalities that enable gender-based violence to persist. To combat the socio-legal challenges that marital rape presents to society, as well as in response to the momentum that has provided for the #MeToo movement, the following recommendations are made.

Amending Section 375 of the IPC to eliminate the marital rape exception. Such a law would put India on the same footing with international human rights norms and would acknowledge that consent is fundamental to all sexual relationships, including marriage. There is a need to ensure the Protection of Women from Domestic Violence Act, 2005, specifically recognizes marital rape as one of the forms of domestic violence. The creation of fast-track courts for handling cases of marital rape and sexual harassment is very essential.

The nation should come together to launch national campaigns aimed at educating the public about consent, gender equality, and women's legal rights. These campaigns must challenge patriarchal attitudes and emphasize that marriage does not result in irrevocable consent. Integrating gender sensitization programs into school and college curricula is vital for teaching young minds about consent, healthy relationships, and respect for women's autonomy. Encourage the media and entertainment industries to portray women as equal partners in relationships and to address issues such as marital rape and sexual harassment with the seriousness they deserve. Establish counseling centers and rehabilitation programs for survivors of marital rape and sexual harassment through government initiatives. These centers should also provide psychological, legal, and financial support. It is essential to reach out to women facing abuse through helplines and safe spaces. It is pertinent to ensure that these services are accessible, confidential, and responsive.

The judges, lawyers, and police officers should be trained to adjudicate cases of marital rape and sexual harassment in a sensitive and bias-free manner. This includes empathizing with survivor trauma and avoiding victim-blaming. Prepare a standard operating procedure (SOP) for law enforcement agencies to ensure that complaints of marital rape and sexual harassment are taken seriously and investigated without delay. Support measures that enable women to become economically independent, including training initiatives and access to job opportunities should be made available. Economic independence can help women escape abusive marriages and assert their rights. Educating individuals to understand their rights and recognize the signs of abuse or violence would also go a long way.

The #MeToo movement is an important tool to address sexual violence in private spaces, including marital rape. Survivors should be assisted in coming forward and pursuing justice. Collaborating with women's rights activists groups will be crucial as it will help in raising public awareness about marital rape and advocate for legal reform.

The question of marital rape is intertwined with the #MeToo movement, as they also manifest a larger fight for gender justice in India. The #MeToo movement has highlighted many issues, such as sexual harassment, but we are still not in a position to have marital rape recognized as a crime. An action in this direction would not only ensure the criminalization of marital rape but also contribute to raising awareness and empowering women, which will bring India closer

to becoming a more just and equitable society where every woman's right to dignity, autonomy, and safety is respected and protected.

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