

In This Issue

Criminalizing Marital Rape in India



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In This Issue

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Lead Essay

Criminalizing Marital Rape in India

Introduction

HE PUSHES ME ONTO THE BED AND JUMPS ON ME AS IF MAKING LOVE TO HIM WASN'T AN OPTION BUT AN OBLIGATION- Simar Singh (*The Legal Rapist*)

India is one of the few countries in the world that continues to exempt husbands from being charged with rape committed against their wives. Despite amendments, law commissions and new legislations, it is yet to be considered an offence. The recent stance of the Supreme Court, what makes rape acceptable within the institution of marriage, is the clause 2 of Section 375 of the Indian Penal Code (IPC). The exemption that aims at protecting the “institution of marriage”, a man can continue to have sexual intercourse or indulge in a sexual act with his wife, even against her wishes. She only has to be more than 15 years of age. Criticizing the government and the judiciary, there is a serious outrage by many women rights activists and NGOs claiming the rape laws to be anti-woman and dilutes child rights.

“The day will come when men will recognize woman as his peer, not only at the fireside, but in councils of the nation. Then, and not until then, will there be the perfect comradeship, the ideal union between the sexes that shall result in the highest development of the race.” - Susan B. Anthony

Marital Rape and the Current Scenario in India

The issue of marital rape - in India, has shown a giant loophole in the country's judicial law. The fact that there is acceptance of unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent indicates the status of women in society and within the institution of marriage. Marital rape could be by the use of force only, a battering rape or a sadistic/obsessive rape. It is a non-consensual act of violent perversion by a husband against the wife where she is physically and sexually abused. The Section 375 of Indian Penal Code, 1860 which has been under amended in the year 2013 defines rape and also prescribes its punishment whereas the Exception to S.375 states: “*Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.*” This section clearly creates two categories of persons: married women and unmarried women.

The Centre, states that marital rape cannot be considered as a crime in a country, where culture and traditions hold a greater position, keeps the institution of marriage above the bodily integrity of women further defends the Supreme Court, when it stated that a man forcibly having sex with his minor wife between the ages of 15 to 17 years of age, should not be regarded as rape. This exception in the rape law, the Centre said, is to ‘protect the institution of marriage’.

The Minister of State for Home Affairs Haribhai Parathibhai Chaudhary told the Parliament, in a written reply that there is no proposal to make it a criminal offence as the concept cannot be applied in the country where marriage is treated as a ‘sacrament or sacred’. “It is considered that the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors, including level of education, illiteracy, poverty, myriad social customs and values, religious beliefs, mindset of the society to treat the marriage as a sacrament” as a response to a question by DMK's Kanimozhi who asked the home ministry whether the government will bring a bill to amend the Indian Penal Code to remove the exception of marital rape from the definition of rape; and whether UN Committee on Elimination of Discrimination Against Women had recommended to India to criminalize marital rape.

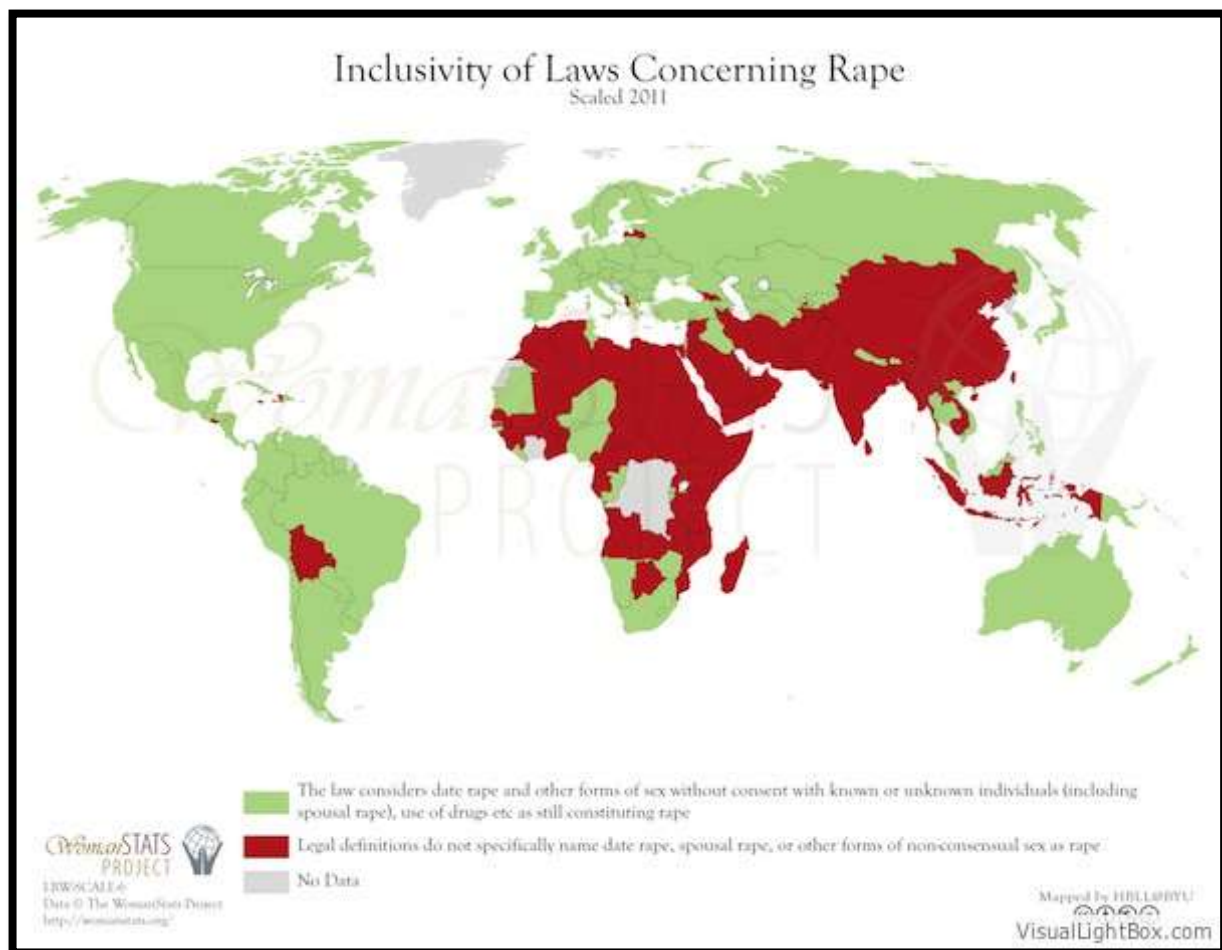
Union Minister for Women and Child Development Maneka Gandhi, differing stance on marital rape received severe criticisms from many women rights activists. According to a statement, she has recently said that the concept of marital rape, as understood internationally, could not be suitably applied in the Indian context due to various factors like level

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of education or illiteracy, poverty, myriad social customs and values, religious beliefs, mind-set of the society to treat the marriage as a sacrament. In the year 2015, her opinions were different. “My opinion is that violence against women shouldn’t be limited to violence by strangers. Very often a marital rape is not always about a man’s need for sex; it is only about his need for power and subjugation. In such cases, it should be treated with seriousness,” she had said.

International Standard: Is India the only Country where Marital Rape Isn’t a Crime?

According to UN Women’s 2011 Progress of the World’s Women, In Pursuit of Justice report, out of 179 countries with available data, 52 had laws against marital rape, while 127 countries did not have laws against marital rape. Presently, India stands among the worlds’ conservative nations like Iran, Pakistan, Syria and South Sudan — which have no laws to protect women from marital rape.



[\(https://womanstats.wordpress.com/2016/02/05/violence-against-women-marital-rape/\)](https://womanstats.wordpress.com/2016/02/05/violence-against-women-marital-rape/)

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Against the “Sacrament of Rape”

Women’s rights activists, women’s organizations and the National Commission for Women have been demanding that marital rape be made a criminal offence as it is against the dignity of women who are forced to suffer the worst form of sexual violence silently within the four walls of their homes.

“If a stranger [rapes] me, then you are willing to hang him,” said Vrinda Grover, a prominent human rights advocate. “But if the perpetrator is a member of my family, why don’t you recognize it as a crime?”

A non-government organisation – ‘Independent Thought’ filed a Writ Petition (PIL) before the Supreme Court of India seeking a declaration that the ‘Exception 2’ to Section 375 of the Indian Penal Code, is violative of Articles 14, 15 and 21 of the Constitution of India to the extent that it permits intrusive sexual intercourse with a girl child aged between 15 to 18 years only on the ground that she has been married.

The other major aspect pointed out is the age limit of 15 years above which marital rape is not an offence is inherently problematic, as normally sex with a girl up to the age of 18 is an offence regardless of consent. The exemption given to marital rape, as Justice Verma noted, “Stems from a long out-dated notion of marriage which regarded wives as no more than the property of their husbands”.

“The whole fight is about the girls between the age of 15 and 18. Child marriage is still a reality for a large part of the Indian society. A girl can’t vote till she is 18, but is deemed mature enough to consent to sexual intercourse in the marriage. How fair is that?”-Swaty Malik, Delhi-based Lawyer

The prosecutor for the NGO, who argues to raise the age of consent, rightly points out the anomaly that women between 15 and 17 years of age who are not married and have consensual sex will be deemed raped, as they are considered underage according to the POCSO Act. According to the terms of POCSO, any person below the age of 18 is a child. Therefore, the notion of "consent" does not have a legal standing in their cases. Thus the exemption stands in contradiction with the IPC provision.

“The rationale is coming from the sheer numbers. About 240 million women in India alive today were married before they turned 18. A cultural problem can not only have legal measures.”-Flavia Agnes, Senior Lawyer, Bombay High Court

What Makes Marital Rape Acceptable?

What caused the crises is the widely accepted norm of behavior for men and women across the world and this is perpetuated by a highly gendered process of socialization which begins almost from birth- when we choose the color blue for boy and pink for a girl. A wife’s role has traditionally been understood as that of a homemaker. Sex has been treated as obligatory in a marriage and taboo outside it. In today’s world, the idea that a woman (wife) has to have sex with her husband irrespective of her will, consent, health, etc, is absolutely acceptable. Hence, in a country that does not outlaw sexual violence within marriage, how empowered can women hope to feel?

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A STRATEGY TO CRIMINALIZE MARITAL RAPE

In a patriarchal society like India where marriage is considered sacrosanct criminalizing marital rape is not even easy. Last year, the United Nations Population Fund and the International Centre for Research on Women surveyed more than 9,200 men across seven Indian states. “One-third of them admitted to having forced a sexual act on their wives, while 60% said they’d used some form of violence to assert dominance over their partners”.

Various studies suggest that the statistics provided by the NCRB, especially on crimes against women, are grossly underreported. “Over 40% in 2005-06 and 30% in 2015-16 of married women in India have faced varied forms of domestic violence, and going by those numbers, not even 1% of married women facing domestic violence actually lodge complaints under Section 498A.” In 2013, as per a recent UN Survey, “a quarter of 10,000 men questioned in six Asia-Pacific countries, including India, admitted to having raped a female partner”. The United Nations Population Fund and the ICRW found that 60% of men admitted to using violence—kicking, beating, slapping, choking, and burning—to establish dominance.

Worldwide, studies show that health problems caused by marital rape include HIV and other sexually-transmitted infections, vaginal bleeding or infection, pain during sex, chronic pelvic pain, and urinary tract infections. The physical violence associated with marital rape can also lead to complications during pregnancy, resulting in health problems for both women and their children. The age factor, of 15 years above will leave a deeper impact on the mental, physical and gynecological health status of the child. There are chances that the victim, in this scenario will be unaware of what she has gone through except feeling the pain and doesn’t realize that her rights over their own body is violated against her will.

Conclusion

Effective laws should be established, starting with criminalizing marital rape. In a recent online poll conducted by the Hindustan Times, out of the 1,898 readers an overwhelming 61.91% respondent disagreed with the government's response to Kanimozhi refusing to consider marital rape as a legal offence in India. On the other hand, 35.14% respondents agreed with the opinion and 2.95% said they don't know or cannot comment on the government's reply. Both men and women aided by the government should come together and participate in raising awareness among the public that marital rape is a crime. The initiation should direct towards greater investment in health, legal and rehabilitation services for people affected by domestic violence. According to a decade of data on 1,675 abused women, which was collected by Dilaasa, a crisis intervention centre, only 47% of women went to the police. A third of those who did not approach the police had faced violence for three to five years, two-thirds had faced violence during pregnancy, and a third had attempted suicide. A quarter also experienced rape and sexual assault with objects. The judiciary in India, by passing the much needed legal reforms can lead the way towards equality by encouraging women to come up and report cases against the violence they face and help the bring about a change in the way marital rape is viewed in society.

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References

Gender roles and their influence on life prospects for women in urban Karachi, Pakistan: a qualitative study (2016, 2 November) *NCBI*. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3208374/> on 11 August 2017.

UN Women - Facts and figures: Ending violence against women. Retrieved from <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures> on 7th August 2017.

Human Rights Watch-Q & A: Child Marriage and Violations of Girls' Rights (14th June 2017). Retrieved from <https://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights> on 2nd August 2017.

PriyankaRath, “Marital Rape and the Indian legal scenario”. Retrieved from http://www.indialawjournal.org/archives/volume2/issue_2/article_by_priyanka.html. Date Accessed on 13 August 2017.

SandhyaRaghavan (2017, July 12) “Why rape victims don’t fight back” *India News*. Retrieved from <http://www.thehealthsite.com/body-mind-soul/why-rape-victims-dont-fight-back-k0717/> on 4 August 2017.

NamitaBhandare (2015, May 25) “Behind closed doors: Marital rape in India” *Livemint*. Retrieved from <http://www.livemint.com/Politics/b6HcnmMqYadNzWAP05FbEO/Behind-closed-doors-Marital-rape-in-India.html> on 4 August 2017

Daily Bite (2017, August 10) “By not seeing marital rape as crime, Supreme Court is doing a disservice to Indian Women” *Daily-O*. Retrieved from <http://www.dailyo.in/variety/supreme-court-marital-rape-india/story/1/18866.html> on 11 August 2017

Press Trust of India (2017, August 10) “Marital Rape Not Penal Offence, Parliament Debated It: Supreme Court” *NDTV*. Retrieved from <http://www.ndtv.com/india-news/marital-rape-not-penal-offence-parliament-debated-it-supreme-court-1735713> on 10 August 2017.

Press Trust of India (2015, April 24) “Private bill on making marital rape a crime tabled in Rajya Sabha” *India*. Retrieved from <http://www.india.com/news/india/private-bill-on-making-marital-rape-a-crime-tabled-in-rajya-sabha-363151/> on 3 August 2017.

VasundharaSirnate (Updated on 2016, September 06) “When marriage is less than sacred” *The Hindu*. Retrieved from <http://www.thehindu.com/opinion/op-ed/when-marriage-is-less-than-sacred/article7315485.ece> on 2 August 2017.

UNHCR – Gender Stereotypes/Stereotyping. Retrieved from <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx> on 13 August 2017.

Kavitha Krishnan (2015 December) “Rape Culture and Sexism in Globalizing India”. Retrieved from <http://sur.conectas.org/en/rape-culture-and-sexism-in-globalising-india/> on 4 August 2017.

Lead Essay

ZenaTahhan(2016, September) “India: More than 34,000 cases of rape reported in 2015” *Aljazeera*. Retrieved from <http://www.aljazeera.com/news/2016/08/india-34000-cases-rape-reported-2015-160831140518208.html> on 9 August 2017

Dr.Bhavish Gupta &Dr.Meena Gupta (2013 GJLS Vol. 1, No. 1) “Marital Rape: - Current Legal Framework in India and the Need for Change”. Retrieved from <http://law.galgotiasuniversity.edu.in/pdf/issue2.pdf> on 10 August 2017.

Bindu H Doddhatti(2017, AUGUST 11) “The Dangerous, False Myth That Women Routinely Misuse Domestic Cruelty Laws”*The Wire*.Retrieved from <https://thewire.in/166766/section-498a-domestic-cruelty-laws/> on 11 August 2017.

“India marital rape victims' lonely battle for justice” (2015, May 26) *BBC*. Retrieved from <http://www.bbc.com/news/world-asia-india-32810834> on 12 August 2017.

Headline

Terrorism and graft-free India in 5 years PM Modi's target: Jitendra Singh

(PTI, *The Indian Express*, August 20, 2017)

Union Minister Jitendra Singh compared the years of Quit India Movement leading upto Independence with 5 years of Modi rule where he plans to eradicate corruption, poverty and terrorism. The youth of the country, according to him, was responsible for “cleaning the mess”. He also spoke on Article 35 A which empowers the Jammu and Kashmir government to define “permanent residents” and entitle them to benefits and was of the opinion that this was an attempt by the opposition in ratcheting a sensitive issue to create unrest.

Read more: <http://indianexpress.com/article/india/terrorism-graft-free-india-in-5-years-pm-narendra-modis-target-jitendra-singh-4805333/>

Date Accessed: 20.08.2017

Governance & Development

POLITICS AND GOVERNANCE

LG Anil Baijal approves pay hike for Delhi anganwadi workers

(PTI, *The Indian Express*, August 17, 2017)

Following protests of anganwadi workers and helpers who had demanded an increase in honorarium, health insurance, pension after retirement, etc., the Delhi cabinet's decision to double their allowances finally received Delhi Lieutenant Governor Anil Baijal's approval. The workers, who receive Rs. 5000 per month, would now be paid Rs. 10,170; and helpers, who receive Rs. 2,500 per month would now be paid Rs. 5,089.

Read more: <http://indianexpress.com/article/india/lg-approves-pay-hike-for-delhi-anganwadi-workers-4801735/>

Date Accessed: 19.8.2017

EDUCATION

Agency to fund higher education set to take off

(Vikas Pathak, *The Hindu*, August 19, 2017)

The Higher Education Financing Agency set up to fund higher education institutions and boost infrastructure and approved by the cabinet last September will soon begin to accept project proposals for funding. The Ministry of Human Resource Development has stated that an institution is entitled to 10 times the funds it escrows in the first year. This Agency which has been set up as a Special Purpose Vehicle will be jointly funded by Canara Bank and MHRD with a government equity of Rs 1000 crores and will be providing assistance on a basis of 10 year loans.

Read More: <http://www.thehindu.com/news/national/hrd-ministry-invites-project-proposals-for-hefa-funding/article19525079.ece>

Date Accessed: 21.08.2017

HEALTH

Parliamentary committee reopens the surrogacy debate, says commercial surrogacy should be allowed

(Priyanka Vora, *Scroll.in*, August 17, 2017)

A report prepared by the Parliamentary Standing Committee on Health and Family Welfare on The Surrogacy (Regulation) Bill, 2016, argues in favour of commercial surrogacy, noting that 'altruistic surrogacy' can amount to "forced labour." The Parliamentary Standing Committee also criticised the government for not basing its proposal for 'altruistic surrogacy' on any "scientific criteria," noting that "all kinds of value judgments have been injected into it [the Bill] in a paternalistic manner."

Read more: <https://scroll.in/pulse/847458/parliamentary-committee-reopens-the-surrogacy-debate-says-commercial-surrogacy-should-be-allowed>

Date Accessed: 19.8.2017

On rural India's health systems: The health checklist

(*The Hindu*, August 17, 2017)

The tragedy in BRD Medical College and Hospital in Gorakhpur has put the entire institution of health under severe scrutiny. The CAG audit on the NRHM's mission on reproductive and child health revealed several loopholes like inadequacy of staff, inability to efficiently utilise funds and lack of primary health centres. Even though an upgraded machinery has long been prepared and Indian Public Health Standards were issued in 2007 and 2012, continuous assessment and investment will be required to ensure that rural areas have access to health care within a 3km radius. As pointed out in the NITI Aayog report, a shift to single-payer system with cost controls is imperative to enable equity in distribution of medicines.

Read more: <http://www.thehindu.com/opinion/editorial/the-health-checklist/article19504473.ece>

Date Accessed: 18.08.2017

Governance & Development

ENVIRONMENT

Kochi chosen to implement biodiversity project

(KS Sudhi, *The Hindu*, August 21, 2017)

A conservation project supported by Germany to assist the implementation of National Biodiversity Strategy and Action Plans has chosen Kochi, Mangalore and Panaji as the implementors of its project. The main focus of this project to achieve the goals outlined in Aichi Target 2 which was adopted at the Conference of the Parties of the Convention of Biological Diversity, held in Nagoya in 2010. It is a four year project and will attempt to integrate biodiversity conservation at all levels of government for effective ecosystem management.

Read more: <http://www.thehindu.com/news/cities/Kochi/kochi-chosen-to-implement-biodiversity-programme/article19530533.ece>

Date Accessed: 21.08.2017

AGRICULTURE

BJP MP flays Maharashtra government over loan waiver scheme for farmers

(PTI, *The Indian Express*, August 18, 2017)

BJP MP Nana Patole has expressed his disappointment over the disorganised implantation of the loan waiver scheme in Maharashtra and its failure in reaching and impacting the lives of farmers. He accused the government of being insensitive towards the plight of farmers and pointed out that Rs 34000 crores waiver which was termed as historic have been ineffective when it came to compiling and collecting data on farmer loans. These comments came in the light of 34 farmer suicides in 10 days in eight districts of Maharashtra.

Read more: <http://indianexpress.com/article/india/bjp-mp-flays-maha-govt-over-loan-waiver-scheme-for-farmers-4802335/>

Date Accessed: 18.08.201

Opinions/Books

OPINION

Naming a right

(Ujwala Uppaluri, *The Hindu*, August 17, 2017)

In the context of increasing intrusiveness of governments and technologies into the personal lives of people, the author highlights the importance of declaring the right to privacy as a fundamental right. Commenting on the government's argument that the right to privacy is incapable of being defined, the author argues that the Supreme Court has historically recognised unenumerated rights as fundamental rights and has thereby acknowledged the need for constitutional protections against the contemporary challenges of changing times.

Read more: <http://www.thehindu.com/todays-paper/tp-opinion/naming-a-right/article19505839.ece>

Date Accessed: 20.8.2017

The Behaviour Puzzle

(Sunita Narain, *Down to Earth*, August 15, 2017)

Owing to the ambitious targets required to make India open-defecation-free, many state governments have resorted to name-and-shame strategies – blowing whistles at and clicking photographs of people defecating in the open – to bring about a “behavioural change” in terms of toilet usage. Such strategies are not only shameful, but also ineffective. The author argues for the importance of increased government investment in building awareness about the health impacts of poor sanitation – something that can act as an effective social pressure against open defecation.

Read more: <http://www.downtoearth.org.in/blog/the-behaviour-puzzle-58349>

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