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Controversial Judgment: Examining the Madhya Pradesh High Court's Verdict on Marital Rape

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ABSTRACT

The Madhya Pradesh High Court has ruled that an unnatural sexual relationship with a wife does not qualify as rape and that her agreement is not necessary. This ruling has drawn attention due to the convergence of gender parity, sexual liberty, and marital rights in Indian legislation. Historically, rape laws emerged in Babylon in the 1900s, with the belief that rape could never occur in a married relationship. However, India remains one of the 36 nations in 2022 where a man can legally rape a woman as long as they are in a lawful marriage. The Indian Supreme Court raised the age of consent for marriage from 15 to 18 in 2017, but rape for married women over the age of 18 is still decriminalized. In 2024, the court quashed an FIR under Section 482 of the CrPC, stating that consensual acts between spouses do not constitute an offence under Section 377 of the Penal Code, 1860 (IPC). The court argued that "marital rape has not been recognized so far" and that the absence of consent for unnatural acts is less significant in the context of marital relations. The Indian Penal Code defines rape as sexual intercourse without consent, against her will, or by coercion, including intoxication, dupedness, unsound mental health, or under 18 years of age. The concept of marital rape is considered inappropriate in the Indian context, as it undermines equality and discriminates against women based on their marital status. The National Family Health Survey (NFHS) shows that 1 in 3 Indian women aged 18-49 report experiencing marital abuse, while 5%-6% report sexual assault. To ensure legal protection, legislation should recognize rape as a criminal offence, clarify the age of consent, and harmonize domestic laws with international standards. Support for victims should include safe shelters, medical care, psychological support, and legal aid. This is a necessary step towards establishing gender equality and defending fundamental rights.

Keywords: Marital Rape, Gender Parity, Consent, Indian Legislation, Legal Protection.

The recent verdict from the Madhya Pradesh High Court, which ruled that an unnatural sexual relationship with a wife does not qualify as rape and that her agreement is not necessary, has

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drawn a lot of attention. This concise study examines the legal subtleties and sociological repercussions of this ruling. Examining the convergence of gender parity, sexual liberty, and marital rights, we tackle the intricacies of Indian legislation and societal perspectives about violence against intimate partners. We hope to spark a necessary conversation and advance legislative changes that protect the rights and dignity of every person, regardless of marital status, by dissecting this controversial decision.

During the 1900s, was when rape laws emerged first in Babylon. It was commanded by the Court of Hammurabi that if a man forces sex on a virgin living under the guardianship of her father, or the wife of a married man, he would be sentenced to death on the grounds of rape. Whereas in other parts of the ancient world, rape had a patriarchal notion, considered a property crime against the husband or the father of the woman that was raped, and the ludicrous part is where the victim's father or husband was allowed to rape the rapist's wife or daughter as a form of punishment. What is even more astonishing is that these victims were killed because they were viewed as damaged goods and not marriageable assets. British jurist Matthew Hale once stated that a woman "gave herself" to her husband for life when she entered marriage. He further stated, "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract." It was believed that rape could never occur in a married relationship since the continence of a woman could never be "defaced" by her spouse. This notion has strong roots in both the British common law system and the legal systems of its colonies. These mediaeval regulations influenced the 1860 drafting of the Indian Penal Code.² Sadly, India is still one of the 36 nations in 2022 where a man can legally rape a woman so long as they are in a lawful marriage. Why is this the case? A Parliamentary Standing Committee stated in 2012 that criminalising marital rape would place "great stress" on the family system as a whole in response to a judicial committee's proposal to that effect. Criminalising rape within a marriage would "destroy marriages" and "create absolute anarchy in families," according to prominent Indian lawmakers. Is it, however, sufficient reasoning to stop the abuse that these women endure?

"375. A man is said to commit "rape" if he—

penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her do so with him or any other person; or inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her do

² State Of Women's Sexual Autonomy In India — Human Rights Pulse.

so with him or any other person; or manipulates any part of the body of a woman to cause penetration into the vagina, urethra, anus or any ~ of the body of such woman or makes her to do so with him or any other person; or applies his mouth to the vagina, anus, and urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates a willingness to participate in the specific sexual act: Provided that a woman who does not physically resist the acts of penetration shall not by the reason only of that fact, be regarded as consenting to sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”

The Indian Supreme Court raised the age of consent for marriage from 15 to 18 in the historic case *Independent Thought v. Union of India* in 2017. The court said that it violated articles 14, 15, and 21 of the Constitution to excuse the rape of children during marriage. While all married

minor women are now protected, rape for married women over the age of 18 is still decriminalised, therefore this advancement is still restricted.

In 2024, the Madhya Pradesh High Court quashed an FIR under Section 482 of the CrPC, stating that consensual acts between spouses do not constitute an offence under Section 377 of the Penal Code, 1860 (IPC). The single-judge bench, consisting of G.S. Ahluwalia, J., held that such acts are not offences under Section 377, in line with the amended definition of "rape" and the principles established by the Supreme Court. The court argued that "marital rape has not been recognised so far." The court also noted that the Supreme Court in *Navtej Singh Johar v. Union of India*, (2018) 1 SCC 791, has decriminalized consensual sexual conduct between adults of the same sex under Section 377, making the absence of consent for unnatural acts less significant in the context of marital relations. The court dismissed the argument regarding the delay in reporting, stating that since the alleged act itself was not an offence, the timing of reporting became irrelevant. The court concluded that consensual unnatural sex between spouses does not constitute an offence under Section 377 of the IPC, and no further deliberations are required as to whether the FIR was lodged based on frivolous allegations.³

Although the Indian Constitution states that "No person shall be denied equality before the law or equal protection under the law within the territory of India" the nation's rape laws discriminate against women by dividing them into married and unmarried groups. The husband's sexual exploitation of his wife violates her right to privacy as a married woman. The act also violates Article 21 of the Constitution, which guarantees the right to physical and sexual self-determination, dignity, and freedom of speech. According to S.375 of the Indian Penal Code, "rape" is defined as, sexual intercourse with a woman without her consent, against her will, or by coercion. It also includes sexual intercourse when the woman is intoxicated, duped, has unsound mental health, or is under 18 years of age. Judge Ahluwalia further noted that since marital rape has not yet been acknowledged, any sexual activity or act of sexual liaison between a husband and wife—as long as the woman is not younger than fifteen—does not qualify as rape. The wife's lack of consent to abnormal conduct becomes less significant.⁴ Matrimony is seen as a sacred bond and a sacrament in India. The court declared in 2016 that the idea of marital rape was inappropriate for the "Indian context" and rejected it. What is the Indian context specifically? Is the intention to deny women their sexual agency? The fundamental component of the crime of rape is consent. Not making marital rape criminal undermines equality before the law and discriminates against women based on their marital

³ Unnatural sex by husband with wife not offence under Section 377 IPC: MP High Court.

⁴ Nothing unnatural about husband having non-consensual sex with wife, Madhya Pradesh HC – The Leaflet

status in the interest of preserving the institution of marriage. Violence in a marriage cannot be excused for these acts.

The data on the offences committed in a marriage is quite distressing. Given estimates from the third (2005–06) and fourth (2015–16) rounds of the National Family Health Survey (NFHS) revealed that the prevalence percentage of Intimate Partner Violence (IPV) against women ranges between 3% and 43% in different states of the country, the lack of legal protection against marital rape is an urgent matter concerning women's rights in India. According to data from the fifth phase of the survey, which was carried out in 2019–20 among over 637,000 sample homes throughout 707 districts across 28 states and eight union territories, 1 in 3 Indian women between the ages of 18 and 49 report having experienced marital abuse, while at least 5%–6% report having experienced sexual assault. The NFHS survey findings found a strong link between sexual and physical violence, so it recorded marital sexual violence under the umbrella of spousal violence. A breakdown of the findings shows that 5.6% of married women were physically forced to have sexual intercourse with their husbands, 2.7% of women were physically forced to perform sexual activities that they did not wish to perform, and 3.7% of the women were forced to perform sexual activities against their will through threats of physical violence. Under the Protection of Women From Domestic Violence Act, of 2005, a woman who has experienced marital rape may go to court to request a legal separation from her spouse. The hallowed place of marriage is where she forfeits her human rights. However, the laws that are in place to safeguard the rights of victims of marital rape are insufficient, and the actions taken are intolerable. According to the Constitution, men and women are equal and enjoy the same fundamental rights. Sadly, her husband's abuse is a violation of these fundamental rights. It is a pervasive issue that millions of Indian women face. Since it's thought to be a more private matter best handled inside a family, it frequently remains unnoticed. Most of the time, they might not share it as well since they worry that preconceptions and cultural biases will make people not believe them.

What then may be remedies for rape in marriage?

The first step in ensuring legal redress and protection for victims of marital rape is to change legislation to recognize it as a criminal offence. The current law allows for marital immunity to be preserved, but none of this applies to non-consensual sexual conduct within a marriage. The age of consent should also be clarified so that everyone, regardless of marital status, receives the same treatment. This would shield youngsters from being sexually exploited in marriage. Additionally, interpreting current laws in a way that protects people's dignity and rights, such as the right to bodily autonomy and freedom from sexual assault in marriage, takes

judicial activism. Any legal definition of rape should centre around the idea of consent. Assuming that marriage is an unquestionable or permanent contract for sexual activity is not correct. The fact that marital rape is now considered a criminal offence emphasises how crucial consent and individual liberty are to everyone. International human rights rules highlight freedom from violence and the right to physical integrity. India should harmonise its domestic laws with international standards by outlawing marital rape and guaranteeing victims' access to justice, given its signature on several international accords. Support should be provided to victims of marital rape which includes safe shelters, medical care, psychological support, and legal aid.

To conclude, all individuals, regardless of their marital status, must be protected from marital rape by law. The legal recognition of non-consensual sex inside marriage as a criminal offence serves to validate the significance of consent, protect human rights, and ensure that victims receive justice. Although deeply rooted cultural ideas may oppose this development, it is a necessary step towards establishing gender equality and defending everyone's fundamental rights. Legislators, policymakers, and society must collaborate to guarantee that the legal system changes to reflect modern conceptions of consent and autonomy and preserve married people's rights and dignity.
