

Rape Is A Crime In India — But There Are Exceptions

April 13, 2016 1:14 PM ET |

In India, rape is illegal. And the definition of what constitutes "rape" was widened only recently in response to a horrific fatal assault in New Delhi in 2012. Forced penetration by any object in any orifice is now a crime. Despite this law, some men in India can have sex with a woman against her will. That's because Parliament chose to exempt husbands.

This decision — which makes India one of 49 nations that don't criminalize marital rape — has come under fire from women's rights advocates around the globe. The [U.N. Committee on Elimination of Discrimination Against Women recommended](#) that India change its stance in [July 2014](#). And again, in March 2016, United Nations Development Program Chief [Helen Clark went on record](#) to say India would run afoul of the Sustainable Development Goals it has adopted if it does not amend this law.

But many of India's leaders argue that this change would be at odds with the culture of the country. That group includes Maneka Gandhi, union minister for women and child development, who had previously backed the criminalization of marital rape. Last month, she created a stir when she announced that she was reversing her position. The argument that Gandhi and others make is that societal norms, poverty and a lack of education make such a law out of the question. That doesn't mean that there aren't voices in India speaking out against marital rape.

In 2015, two separate pleas were submitted to the Supreme Court asking for the law to be amended by deleting the marital rape exception. In the first, the petitioner, a 28-year-old, had already filed charges against her husband for domestic violence (a civil, not criminal offense) as well as "cruelty." She used her maiden name, Reema Gaur, to shield her identity.

What she wanted next was the ability to bring him to justice for repeatedly raping her. "The law as it stands today amounts to a state-sanctioned license granted to the husband to violate the sexual autonomy of his own lawfully wedded wife," the plea stated. Appearing on TV, heavily veiled, wearing spectacles that magnified her eyes, Gaur talked about her marriage. "Every night post the wedding was a nightmare with me. ... He would never even ask my permission," she said. "He used to beat me up, insert artificial [objects] in me. At some point I was in such a condition I was not even able to walk," she said, her voice thick with tears. On the night she decided to leave, she said, "He hit me 18 times on my head with a box and a torchlight. And then he inserted the torchlight in my vagina."

Bleeding and in a semiconscious state, she called her mother for rescue. The bleeding lasted two months. In the year she was married, when Gaur tried to talk to her in-laws and her parents, "The only thing they told me is, 'Try to adjust.'" In Indian society, as in many nations, marriage is often seen as a private relationship in which abuse is not only tolerated but also expected. The Gates/Clinton foundations' [No Ceilings Report](#) says that 80 percent of women in developing countries believe their husband has a right to beat them and that 1 in 3 men has admitted to forcing sex with his wife.

A 2013 United Nations report said that of 10,000 men surveyed in six countries, including India, a quarter [admitted to having raped a female partner](#). The study said, "The most common motivation that men cited for rape was related to sexual entitlement — a belief that men have a right to sex with women regardless of consent." It gets more complicated. In India, according to the Hindu Marriage Act, withholding conjugal relations is reasonable grounds for dissolution of a marriage and divorce. But forcing those conjugal relations? Within a marriage, it's not a crime, unless the bride is younger than 15 (which, in itself, is a crime — the legal age for a woman to marry is 18).

So any woman who has been sexually assaulted by her husband is stuck with the same limited options as Gaur: She can only file for protection and a restraining order under the [Domestic Violence Act](#) or under Section 498A, which punishes a husband with up to three years in prison on [grounds of cruelty](#). Kamlesh Kumar Mishra, a legal consultant at the Human Rights Law Network, was the advocate who filed the first public interest litigation in the Supreme Court representing Gaur. The court's response was not what he had hoped for: "Since this is a petition by an individual, we would not like to intervene." The petition was withdrawn.

Unfazed, Mishra's colleagues filed a second petition, this time representing several women's right organizations. "It went before the same bench and met the same fate," Mishra said. The justification this time? "India is not a country where this can be done." Marital rape, they asserted, is a Western concept, and they cited the Law Commission of India's [172nd Report on Review of Rape Laws of 2000](#), which said that the exemption of husbands should not be removed since "that may amount to excessive interference with the marital relationship" and that "marriage presumes consent."

Last year the U.N. Committee on Elimination of Discrimination Against Women recommended that marital rape be criminalized in India. After that recommendation, a question was raised in the upper house of Parliament asking what action had been taken. Haribhai Parathibhai Chaudhary, minister of state for home, replied, "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." This response was repeated verbatim by Minister Gandhi in Parliament. Deepika Narayan Bhardwaj, a filmmaker and activist, agrees that marital rape is a societal problem but does not believe the law needs to be changed.

She says it's possible to get justice under the existing law: "Having a new law with no measures in place, no processes, checks and balances — in today's circumstance, the marital rape law would be a disaster," she says. She believes that the state doesn't have the ability to support women who might seek a divorce because of marital rape. "It's naive to say women have complete right of consent and rights over their body, when the truth is they're dependent on their husbands for everything, financially, emotionally," says Bhardwaj. "A woman files marital rape, the guy lands in jail. If the woman is dependent on him, where does she go?" But protection from marital rape is "not a Western problem. It's a basic human right," argues Trisha Shetty, founder of She Says, a website for information and action on sexual crimes against women. "People in India think sexual abuse and rape is something that happens to the poor. That myth needs to be

broken," she says. People across all economic classes get abused, she adds, "That whole assumption that you're making laws for people who don't understand is nonsense. Everyone understands the concept of consent, of saying, 'No.'" Her response to the opposition: "If you're so aware of the fabric of society breaking, then roll out awareness schemes, educate people. Don't close your eyes and pretend the problem will go away."

She Says and several NGOs, including Jagori (which in Hindi means "awaken, women!"), have organized workshops and other programs to help women speak out about rape. Online, there are additional resources, such as this Marathi language [effort to educate about consent](#) via two folk dancers having a musical discussion about the meaning of "yes" and "no." The government has even set up an emergency hotline, staffed by women, to field calls from women who need police assistance as well as resources and instruction about their rights. In their first year, they received more than 600,000 calls from women, some describing assault and rape within their marriage.

When it comes to changing the law, however, the [buck is still being passed](#). The Delhi High Court has agreed to revisit the second petition refiled by Mishra's colleagues on the grounds of discrimination against married women. The new case challenges the government's stand against criminalizing rape within a marriage, since it a punishable offense when committed by a stranger. The court requested a response on this issue from the Union of India, with a deadline of March 23. How did the government reply? It filed an [extension](#). The issue now remains tabled until May.

<http://www.npr.org/sections/goatsandsoda/2016/04/13/473966857/rape-is-a-crime-in-india-with-one-exception>