

# Marital Rape Law Hypocrisy during Colonial India

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## Abstract

**Introduction:** This paper will study how Colonial India left India in a complex ground in matters of historical, cultural, and legal dimensions, reflecting broader issues of gender, power, and colonial rule. The period that touches on the hypocrisy and contradictions surrounding the societal issues during that period. The burden of Colonial law rule and administrations has been affecting India.

The study of the paper will focus on the understanding of colonial law, the Indian Penal Code (IPC) in 1860, which criminalized many forms of sexual violence but excluded marital rape from its perspective based on the existing doctrine.

**Materials and Methods:** This paper will follow the datasheets related to the Indian Penal Code (IPC) 1860, its related amendments, and legal commentaries from Colonial India that discuss sexual crimes and marital rights. The paper will also go through the government reports by Colonial administrators, commissions, and reform committees addressing women's issues and family law, Articles, and editorials from the Colonial period reflecting public discourse on marriage and gender roles.

**Results:** In my study of this paper, I would put forward the Legal Non-Recognition of Martial Rape, Colonial Hypocrisy and Selective Morality, How Women's Voices have been silenced and their Legacy and Contemporary Implications.

**Conclusion:** The study of marital rape hypocrisy during Colonial India will show how the Colonial Indian administration perpetuated the patriarchy, colonial power, and legal systems that collectively silenced women's rights despite the Colonial administration's mission to civilize and reform Indian society.

**Keywords:** Violence, Injustice, Law, Inequal, Women, Social discrimination, Colonial India, Rights, Protection.

## Introduction

Colonial India reveals hypocrisies within the legal and social frameworks imposed. While the Colonial Legal System introduced several laws to reform personal and social conduct, it but in many cases accepted the existing patriarchal and racial biases in its era of administration. The concept of Marital rape was ignored or denied under Colonial Law, defining a deep-rooted belief that a husband had absolute sexual rights over his wife. The hypocrisy lies in the colonial administration's selective application of justice – while imposing criminal laws to control the colonised population, it approved oppressive customs that denied women protection against sexual violence within marriage. The colonial period exposes a complex interplay between law, gender, and power, revealing how legal systems can perpetuate systematic injustices under the authority and civilisation.

The hypocrisy surrounding marital rape laws during Colonial India is rooted, traditional social norms, colonial legal frameworks and gender politics of the time. Under both pre-colonial Indian customs and British colonial rule, the concept of marital rape was largely unrecognised or dismissed. The prevailing mindset about a wife being subordinate to a husband. Granting him unquestioned sexual rights within marriage. This belief has been deeply rooted in social, religious, and legal practices, which collectively denied women legal protection from sexual violence by their husbands.

After the British established their legal system in India, they introduced laws that aimed to regulate social behaviour, but in action, largely reinforced existing gender hierarchies. The Indian Penal Code (IPC) of 1860, which still forms the basis of Indian criminal law, did not criminalise marital rape, effectively legalising sexual coercion within marriage. The Colonial administration justified this by appealing to notions of social order, family honour, and the supposed purity of marriage. The legal stance exposes a hypocrisy. On one hand, Colonial rulers as agents of progress and justice, introducing reforms in matters as property rights, widow remarriage. On the other hand, they upheld a legal framework that denied women protection from sexual violence in marriage. This contradiction reveals Colonial Law has been selective about enforcing rights and justice, to maintain control over the colonised populace while sustaining gender-based oppression in domestic spheres. The Colonial law, however, marginalised women and denied them fundamental protections against sexual violence in marriages.

### **Case Study –**

#### **The 1889 case**

Colonial India reports of sexual violence, marital rape were documented but often underreported or dismissed by the authorities.

The Phulmoni Dasi Case 1889, a landmark legal case in Colonial India, death of a ten-year-old child bride after a forced sexual assault by her 35-year-old husband, Hari Mohan Maiti. The case and the resulting trial, *Empress v. Hari Mohan Maiti*, have been a major spark for the passage of the Age of Consent Act of 1891. Hari Mohan Maiti was tried in the Calcutta Sessions Court in July 1890, charged under Section 338 of the Indian Penal Code for causing grievous hurt. Due to an exception in Section 375 of the Indian Penal Code from 1860, sexual intercourse with one's wife was not considered rape if she was at least 10 years old as Phulmoni Das was considered of legal age at 10 and married to Hari Mohan Maiti, he was acquitted of rape but convicted of causing grievous hurt and sentenced to 12 months of hard labor. Social reformers and women's organisations highlighted the case to expose the harsh realities faced by child brides. Rukhmabai, one of India's first female doctors who had her own legal challenge against child marriage, participated in the debate. The public reaction and advocacy led to the British colonial government passing the Age of Consent Act of 1891. This act raised the age of consent for sexual intercourse within marriage from 10 to 12 years, violations of which would be defined as rape.

**The Rukhmabai Case 1885** – *Dadaji Bhikaji v. Rukhmabai* in the Bombay High Court, a child bride, Rukhmabai refused to live with her husband, desire for education. Court sided with her, but an appellate court ruled against her, making her a settlement where she had to pay her husband for divorce. The case contributing to the Age of Consent Act of 1891, which raised the age of consent to 12.

### **The 1854 case Jakhoo Wulud Bhowanee – The Bombay High Court (Criminal Cases)**

A twelve-year-old girl, Thukhoo, accused a thirty-year-old man, Jakhoo, the son of Bhowanee. The case was reviewed by the Bombay Sudder Foujdaree Adalat (a colonial court). The lower court recommended a conviction, but the regional court acquitted Jakhoo, stating that rape accusations were easily made and hard to prove, and no physical injuries were found, despite the victim's bloodied clothes and immediate complaint. The judge speculated that the victim's object was to clearly shift the guilt from her own shoulders to those of her partner in guilt, implying she was a consenting partner in illicit sex, which was criminalised as zina under Islamic law then in effect, rather than a victim of rape.

### **The 1823 case of Mussumaut Buman v. Sheikh Meerum**

Kulmee, a ten-year-old girl being the victim accused Sheikh Meerum of raping her in front of her friend Luchmunia. The girl unequivocally demonstrated the treatment she had received; physical evidence was noted on her body. The court's primary reason for the acquittal verdict was the lack of circumstantial evidence corroborative of the charge. During that time, the courts required corroboration of the victim's testimony or physical evidence with additional evidence as-

1. Marks of Struggle, which include torn clothes, broken bangles.
2. Prompt reporting of the incident.
3. Consistent statements from witnesses or indirect evidence that formed an unbroken charge to the accused's guilt.

In this case, despite clear physical evidence, the absence of other forms of evidence led the court to acquit the accused.

### **Violences -**

In Colonial India, sexual violence committed by military personnel or colonial forces has not been in detailed in official records due to suppression and, lack of reporting at the time. Colonial military or police forces were used as a tool of domination and control during resistance and unrest.

#### **1. Contexts of injustices occurred**

During Rebellions and Revolts as the 1857 Indian Rebellion, British troops had committed cruelty, sexual violence against Indian civilians, especially women. These acts were part of punitive measures to suppress the resistance.

#### **2. Colonial Police and Military Repression**

In rural and tribal areas, military and police forces sometimes used sexual violence to punish communities resisting colonial rule or land seizures.

#### **3. Partition of Bengal 1905**

While Protests and crackdowns, there were accounts of women being sexually assaulted by colonial forces as a means to break the spirit of resistance.

#### **4. Legal Framework and Limitations**

The British colonial legal system introduced the Indian Penal Code in 1860, which criminalised rape but with limited opportunities for protecting women in cases involving colonial officials or military personnel. Marital rape was not recognised as a crime, and many victims had little hope.

#### **5. Tribal cases**

Tribal women were often victims of sexual violence by colonial administrators, soldiers, and settlers who controlled or trespassed on tribal lands. Such acts were frequently used to intimidate and suppress

tribal resistance against land dispossession and resource extraction. Tribal areas were governed under special laws or directly by colonial officials. Tribal victims had limited access to formal justice systems, and their cases were rarely prosecuted or investigated seriously.

### 6. Documentation

The colonial domination, patriarchal social structure, around sexual violence led cases to go unreported. Colonial authorities ignored or covered up abuses to protect their image. Legal frameworks during colonial times did not recognise or prosecute martial law, likewise.

### 7. Law making

The colonial system strengthened did not reform laws, as it avoided criminalising marital rape or protecting women from domestic violence. While colonial laws claimed to civilise or protect women, they upheld traditional gender roles had failed to address the realities of sexual violence within marriage.

### 8. Sexual Violence beyond Marriage

Apart from marital rape, women in rural areas faced sexual violence from colonial authorities, landlords, or local elites. Such acts were often met with silence as victims had little access to justice due to social stigma, poverty and lack of legal directions.

### 9. Social Hypocrisy and Silence

Colonial rulers and traditional rural societies engaged in a form of hypocrisy, publicly promoting morality and order while ignoring or even enabling sexual violence against women. Women's suffering was kept secret to maintain family honour or social stability.

### Problems faced -

1. **Abuse and Exploitation:** Many women were subjected to sexual violence, including rape and forced prostitution, by colonial soldiers, officials or settlers. This was frequently used as a tool of domination and control.
2. **Loss of Independence:** Native women lost control over their culture and beliefs due to colonial laws and customs imposed by the colonisers. Traditional norms were disturbed, and women's sexual rights were restricted.
3. **Labour and Bondage:** Women were forced into labour systems, including domestic work or sexual domination, under harsh and exploitative conditions.
4. **Health Issues:** The sexual exploitation and lack of access to healthcare led to widespread sexually transmitted infections and reproductive health problems among women in colonised regions.
5. **Social discrimination:** Women who were victims of sexual violence or exploitation faced social discrimination within their communities, which increased their suffering.
6. **Inequality:** Colonial Law was ignorant about women's rights or recognised sexual violence as a crime against women, leaving victims without justice.

### Consequences

Protests against sexual violence, injustices exposed the harsh cruelty and morality of Colonial rule. It awakens the Indian society about women's rights, gender norms, and the need to protect women from violence. The response to the protests has been met with repression, arrest, violence, and censorship.

### Conclusion

Colonial India has largely ignored women's rights and bodily autonomy. The hypocrisy lay in the colon-

ial administration's claim to uphold justice and morality, while in reality, it had neglected the protection of women from sexual violence, especially within marriage.

The problem of women suffering got deeper because of social stigma, lack of legal recognition of marital rape, and lack the proper justice. Such an environment where abuses remained, normalised and unpunished. Today, Marital Rape and abuse must be recognised as a crime under the law, removing any legal exemptions that protect abusers within marriage. Laws must protect women's rights regardless of marital status. To conduct Social awareness campaigns which can replace, challenge patriarchal norms that ignore marital rape. To educate as it promotes gender equality, respect for consent, and women's rights starting from an early age, and to establish proper support and systems for victims, especially in rural areas. To ensure that Governments enact laws against marital rape and sexual violence to give proper protection for victims.

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