
MARTIAL SEX RAPE IN INDIA

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ABSTRACT

Matrimony is a sacred bond that ties two people, and two families, together. But what if this matrimony is without consent or the people involved in the marriage are not content, then it can turn sour. Marital rape is one of the vilest acts which exist in India. Marital Rape Case is a heinous crime, but people don't even consider this issue because in every married life intimacy is a part of their life which happens between every couple, but people need to address this issue that intimacy without their concern is not a part of their married life. It is one of the biggest threats to gender justice in India. It is one of the social evils which has existed in India since a longer time and is continuing to raise havoc in the country. The Indian society has never considered marital rape as a problem. It is rarely opposed by anyone in the Indian society due to many reasons. Indian legislatures have been given the most onerous task of enacting laws for the safety, security, and development of the country by the Indian constitution. The Indian judiciary gives a ray of hope in this regard but its hands are tied as drafting of laws is the prerogative of legislature and not the judiciary. There are no effective laws in India as far as marital rape is considered.

Whatever, laws are here in India they are not strong enough to contain something as evil as marital rape. There is a need to bring some strong laws to bell the cat of marital rape in India.

INTRODUCTION

Marriage is a cultural and legal institution, that establishes socially sanctioned rights and obligations between individuals. The topic is a taboo and its hardly talked about. In many cultures, marriage forms the basis of acknowledgement of sexual relationships. However, sexual violence and physical aggression within marriages have traditionally formed a grey legal area. Many people have the misconception that marriage gives them the official to fulfil their sexual desires. Marriage is a legal contract between two people of opposite gender with s valid consent between two parties. Sexual relationship between a married couple is considered valid in the eyes of the law but this legality of sex has given the husbands an upper hand to have forceful relation with their spouse. Before being a husband, he is a man same goes to the other partner before being a wife, she is a woman. Rape is Rape even if it is initiated by a husband within the four walls of a married house. Rape is a heinous crime that has numerous effects on a person's mental health and can also lead to various medical consequences. Marital rape refers to **“forcible sexual assault or violence by one spouse towards the other”**. In other words, it's the act of sexual intercourse with a spouse without the consent of him/her. Though historically establishing sexual relationship between the married couple was considered as a 'right' in many societies, the context of consent becomes equally important as among nonmarried individuals. Twentieth century onwards there has been growing international conventions and voices against sexual and intimate partner violence in marriages. However, despite the known devastating consequences of any form of forcible sexual encounter, martial rape has remained under the shadow of legal ambiguity in many nations, outside the criminal law and widely tolerated.

Marital rape is mostly but not exclusively, experienced by women. It tends to form a vicious cycle of abusive relationship between the couple, perpetuating chronic violence. This also varies based on sociocultural and political ideologies. For example, the interpretations of the institution of marriage, traditional ways of viewing male and female sexuality and cultural expectations of relationship dynamics among the husband-wife that led to the concerning reluctance of classifying nonconsensual marital sex as a punishable crime. These doctrines stared getting challenged in the **WEST** between **1960s** and **1970s** during the **“second wave feminism”**, that focused on gender respect, autonomy and right of self-determination. However, marital rape has been overlooked in literature and policies throughout centuries and 'marriage' being used as a common defence in sexual assault cases. This has also led to

invalidation of the experiences of marital rape survivors, reduced help-seeking and persistent trauma. India is one of the 36 countries that has still not criminalized marital rape. The term marital rape also referred to as spousal rape refers to non-consensual intercourse by a man with his wife, obtained by force, threat of force, or abuse physical and psychological violence. It covers all forms of penetration whether anal, vaginal, or oral against the will or without the consent. Over the years, the exemption to an unwilling sexual intercourse between husband and wife in **IPC section 375** has been widely debated and argued against. It has been argued that the concept of “obligatory sexual interaction” by the virtue of marriage is against **Article 14** and **Article 21** of the **Constitution**. India has seen over the years seen legislations like “**The Protection of Women from Domestic Violence**” **Act, 2005** and the **Sexual Harassment of Women at Workplace**. After the inhumane **Nirbhaya** incident in **Delhi** and the **Criminal Law Act 2003** failing to address the issue of marital rape. As the number of rape cases in India are increasing as per the **National Crime Records Bureau**, many incidents of marital rape are unreported. As of now, the exemption still holds, and “**marital rape**” is a grey area.

HISTORY

All social evils have a history and marital rape is no exception to this fact. Marital rape is not a recent or modern phenomenon. It’s history dates to ancient India. Although the exact date of its inception in India is not known but its existence in ancient, medieval as well as modern India cannot be disputed, in those times, women were generally not treated as human beings rather they were the property of their father after marriage of their husband. They were not independent and had no rights. This wrongful thinking gave birth to the evil of marital rape in India. There are numerous instances of marital rape in the past. In those times, there were no effective laws in India for the protection of women, the women had hardly any rights and whatever rights they had they were not aware about these rights. Further, women were completely dependent upon their husbands and had an no option but to submit to the flourishing of marital rape in India. So, the evil of marital rape has a very long history which encompasses through ancient, medieval as well as modern India. Indian society has always been patriarchal or male dominated society from the very beginning. It is because of this very reason that marital rape is generally not considered to be a wrong in Indian society because the victim of marital rape are mostly women rather than men. If men had been the victim of marital rape, then it would have been outlawed in India a long time ago. There are very few voices in India which support the prohibition and criminalization of marital rape in the country. Society plays the

most important role in the elimination of any social evil. No social evil can be eradicated from a society unless the society itself rejects it.

INDIAN LEGISLATURE

Indian Legislature play a vital role in decimating marital rape in the country. But there is lot of reluctance on part of legislature as far as criminalization of marital rape in India is concerned. Various proposals to criminalize of marital rape in India is concerned. Various proposals to criminalize marital rape in India have been shot down time and again. Several bills have been introduced in Indian Parliament to criminalize marital rape in the country but none of them could materialize into any sort of legislation. Marital rape can only be criminalized in India by the Indian Legislature but there are no promoters on its part in this regard. Indian legislature is basically of the view that criminalization of marital rape in the country would adversely affect the revered concept of marriage in India and would lead to higher cases of broken-down marriages in the country. Like the Indian society and the Indian Legislature, Indian executive is also not in favour of criminalization of marital rape in the country. Various appeals to criminalize marital rape in the country have been made to successive Indian Government but none of them have shown the will or audacity to outlaw marital rape in the country. The response of Indian Judiciary towards the evil of marital rape is not as relevant and reserved as that of Indian legislature. Indian judiciary is much more proactive in dealing with the menace of marital rape. There are several important decisions of the Supreme Court of India where the court came down heavily on the practice of marital rape in India and called for the criminalization of marital rape in the country through their numerous judgements. But the role of the Indian Judiciary is very limited in this regard. It is the job of Indian Judiciary is very limited in this regard. It is the job of Indian Legislature to outlaw marital rape in the country and not that of the Indian Judiciary. In India there are laws in place to punish the perpetrators of Rape. **Section 376 of Indian Penal Code** provides punishment for rape, but as far as the evil of marital rape is concerned there are no specific laws to deal with the same. **Section 375, exception 2, IPC** is the only law in India which provides some sort of protection to the victims of marital rape. It states that where the husband commits sexual intercourse with his wife who is below the **age of 15 years**, he can be punished for rape. But this age of **15 years**, has been replaced by **18 years** by **Supreme Court of India**, through its decision in case of **Independent thought v. union of India**. Therefore, at present the law in India is that if a husband commits sexual intercourse with his minor wife, he can be punished for rape, but a major wife has no

such remedy. So Indian Laws only provide partial protection to the victims of marital rape. There is no blanket protection in India against the evil of marital rape.

EFFECTS OF MARITAL RAPE

Marital Rape leave scars in the life of the woman they include physical, psychological, and mental health issues which hurt the emotional as well as the physical wellbeing of the women in the long run. This section is widely bifurcated into psychological and health issues that a woman may encounter during or after rape.

PSYCHOLOGICAL EFFECTS

Women who have had encounter relating to Marital Rape have had cases of depression, PTSD, fear, self-esteem issues, rape trauma syndrome and being sexually unstable, unavailable, or dysfunctional. As soon as a woman is married, she is expected to fulfil her husband's sexual desire. The first time any female must have experienced this, it must come as a shock to her that such a thing might be required without her consent. Any occurrences after that must seem dreadful but numb to her but she knows there is no use denying or not obeying her partner. The woman feels her family name will be tarnished. So, she feels this pressure to maintain her family's name.

Rape Trauma Syndrome is the medical term given to the response that survivors must rape and it is the natural response of a psychologically healthy person to the trauma of rape. This may be immediate or may occur after months or even years. The victims may feel humiliated or degraded. The victims may also feel confused as to why this happened and how could they not help themselves during the incident. Some victims may also blame themselves for being weak not to stop it or for not wanting sexual intercourse as their husbands want them to. A quintessential psychological aftereffect of rape also is self-blame due to which the victim undergoes Post-traumatic Series Disorder because of the feeling of helplessness not being able to help yourself from being raped and self-blaming their self to justify it. As this issue is not even looked at as a problem so, victims may feel shame and embarrassment telling anyone about it. They feel that this is a taboo and talking about it with other people will raise eyes and questions. In the case of **Bodhisattwa Gautam V. Subhra Chakraborty**, a criminal complaint was filed based on a consensual affair and a questionable finding of rape due to failure to marry. Also, in a hearing for criminalizing marital rape, Hon'ble Delhi High Court in 2018 said that; Force is not a pre-condition for rape. If a man puts his wife under financial constraint and says

he will not give her money for household and kids expenses unless she indulges in sex indulges in sex with him and she must do it under threat. All these situations put mental pressure on the victim and their if they have any. This can cause the children to have a severe mental breakdown or go into clinical depression. It, therefore, becomes evident that such acts not only destroy a woman and her life but also have severe impacts on the health of the children leading to a whirlpool effect.

HEALTH ISSUES

Although there is a provision provided in the **Protection of Women from Domestic Violence Act, 2005**, but that accounts for only civil liability for sexual abuse. The psyche behind the violent act can be to show dominance and to instil for that if they do not get what they desire, they may resort to violence. Most women suffer from perpetual soreness due to frequent rapes. This eventually leads to having broken ribs, knife wounds, marks on their body due to the assault, black eyes. These are just a few examples of what women may experience. Most victims have reported feeling sore and bleeding from the vaginal tract. Bleeding occurs due to intense rupture of the vagina. Those forced to have anal sex can report bleeding, pain, and irritability. They may feel nausea if are somehow reminded of the incident of abuse. Amidst this unwanted pregnancy can also be caused and this further causes mental and psychological pressure on the victim. Especially if the victim is between **15–18-year-old**. This can call for premature motherhood and can seriously impact the infant in question. Infertility can also be caused due to vaginal rupture, and this can the victim to never have children. This can seriously deteriorate the victim for the future if they would ever actually want to start family planning. They can be scared for life. This can also drive the victims to take their own life. With the notions revolving around marital rape, and the victim not being able to tell anyone anything about the abuse, the victim may think of suicide as the only option.

HUMAN PERSPECTIVE

Most people are in Favor of not criminalizing marital rape. This creates the face of public opinion and portrays the nation in an incorrigible light. These arguments have gained momentum because most people in India are culturally active and believe that the laws that defined India a thousand years ago are prevalent even today. Moreover, these arguments hold no place in the current times because this exception is discretionary. Here are some arguments and their rebuttal.

ARGUMENTS AGAINST CRIMINALIZING MARITAL RAPE

THE SANCITY OF MARTIMONAL INSITUTION

The first argument regarding not criminalizing marital rape is that it would destroy the sanctity of the marriage, and this would furthermore destroy the family. The sacred bond that a husband and a wife share would be broken, and the meaning of marriage would be lost. Criminalization of marital rape would mean that the state is entering the fine line between home and law which create a brick wall situation for the judiciary. Providing a legislation for the same would mean that the state is crossing boundaries and going beyond its jurisdiction. Marriage is between two people and any decision encroaching upon this line can be met with opposition and harsh criticism.

MARRIAGE IN CONSENT

Marriage is how two individuals enter into a legal union in their personal capacities. Similarly, people have argued that if these individuals have entered this contract on their volition, then the woman has already consented to the marriage. If the marriage is not by her own choice, the parents are responsible for matching the matrimonial relation and that is considered as consent. The tradition of not asking for the woman's consent is widely prevalent. The consent of sexual relationship is thought to be given, to the husband, while consenting to marriage or getting their marriage fixed by their parents. Arranged marriage and forced marriage are two entirely different concepts. Arrange marriage is when both parties are willing to get married upon meeting each other whereas forced marriage is when either one of the parties is not consenting for marriage.

CULTURAL BOUNDARIES

People have been taught to follow certain traditions, norms, and values since they were infants. These values have been etched into one's brains and anything that may go beyond it or does not match the frequency is termed to be taboo. These socio-cultural norms have taught people that is normal for a man to expect from his wife to fulfil his sexual needs. Culture is what makes a nation.

PSEUDO CASES

A large majority of the people have also argued that if legislation is made on marital rape, some

wives will use this as a tact to get out of their marriages or to intimidate their partners into doing anything, threatening to use the said legislation. In this case, of **Amesh Kumar V. State of Bihar**, the Supreme Court held that section **498A** is being used a weapon by disgruntled wives rather than a shield. It would then be the men who would come under the scrutiny of the judiciary every second. This can create a ruckus in judicial proceedings as a plethora of false cases can be filed which will delay the justice of more quintessential cases. India still does not have the means to compensate for all cases being delayed for years.

PRE-EXISTING LEGISLATION

The **Protection of Women from Domestic Violence Act, 2005** is said to be the remedy for marital rape. Arguments are made that if this legislation is already in force, there is no need for a separate legislation for the same in the state. Marital rape can be considered under **Section 3(a)** “harms or injuries or endangers the health, safety, life, limb or well-being whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.” An existing provision has been provided to foresee sexual and verbal abuse at the hands of the husband.

ARGUMENTS IN FAVOR OF CRIMINALISATION

SANCTITY IS DISTORTED

When a man has sexual intercourse with his wife without her consent, the sanctity of matrimony has already been tainted. There is no option of going back and claiming that marital rape can be exempted as it is crossing the boundaries of issues between a man and his wife. Similarly in the **High Court of Gujarat**, in the **case of Nimeshbhai Bharatbhai Desai V. State of Gujarat**, it was held that the non-consensual act of marital rape violates the trust and confidence within a marriage and the prevalence of marital rape in India is what has damaged the institution of marriage. When the concept of sanctity has been contradicted, this argument becomes ethically flawed.

CONSENT IS IMPORTANT

The **Prohibition of Child Marriage Act, 2006** makes child marriage voidable rather than void. Parents can marry off their minor offspring to anyone and the children cannot take a divorce or an annulment from their spouse till they are not minor anymore i.e., **18** years of age. Now **(21)**. However, **Section 375 of IPC, 1860** prohibits sexual intercourse of a man with his wife

less than or of **15 years of age**. This, however, creates a loophole for those between the age of **15 to 18 years of age**. They must co-inhabit with someone who may or may not force them into sexual activities against their consent. This is an old tradition that pledges marriage is consent. Being in the **21st** century, these archaic laws can be changed according to the advancement of society.

CHANGING OF CULTURE

Taking the mythology '**Mahabharat**', it is believed that **Yudhishtira** bet his wife in a game '**chauras**' against **Duryodhana**. From Ancient times, women have been objectified and have been treated as a mere chattel. In marriages, the giving away of the bride is called '**kanyadan**' by the father to the husband. A girl is deemed to be foreign to her family members and is believed to be owned by her husband. Old traditions like this should be logically debated upon and it must be understood that in this era, women have rights and cannot be objectified. The cultural paradigm should be encouraged. This would help in evolution or banishment of old tradition which seen irrelevant.

A CRIMINAL LIABILITY

The **Hindu Marriage Act** and the **Domestic Violence Act** provides the women with a means so that they can remove themselves from a threatening situation in turn for a civil liability. People have argued that if there is an existing legislation for **domestic violence** which is inclusive of '**sexual abuse**' then why do women of India need another legislation. The **Protection of Women Domestic Violence Act, 2005** only provides the offenders with civil liability. Moreover, in civil liability, the perpetrator can get away with just providing compensation to the victim. For this crime, the perpetrator needs to be imprisoned. This will set an example for rest of the society that this crime needs to be recognized and the state will not turn a blind eye to such behaviour.

CONCLUSION

Marital rape continues to be a controversial topic in India and globally. While the international community has made great strides in decriminalizing marital rape crimes, yet India is lagging in addressing this serious violation of human rights. The process of decriminalizing marital rape involves a complex mix of traditions, religious beliefs and changing notions of individuals

rights. The experiences of many countries that decriminalized marital rape show that legal reform can help change societal attitudes and empower survivors. They also show the importance of a holistic approach that includes not just legal changes but education, awareness campaigns and survivor support system. There have been many obstacles to the decriminalization of marital rape in India. The belief in marriage as a sacred institution, fear of false cases, and queries about the definition and evidence of consent are some of the factors that have hindered the process. However, a growing awareness of individual autonomy, dignity and equality is replacing the traditional patriarchal structures. While progress is global and often met with resistance, the recognition of marital rape as a crime is an essential step in ensuring justice for survivors and dismantling harmful patriarchal structures.

As societies continue to evolve, the criminalization of marital rape reflects a commitment to valuing everyone's autonomy, dignity, and well-being. It reinforces the idea that consent is a fundamental human right that should be upheld in all circumstances, including within the confines of marriage. Ultimately the criminalization of marital rape is not just a legal matter, it is a collective statement about valuing human rights, equality, and the pursuit of a more just and equitable society.