



MARITAL RAPE: DARKER SIDE OF A MARRIAGE

*By Riya Kumari & Chayan Roy
From ICFAI University, Dehradun*

“They are all innocent until proven guilty. But not me. I am a liar until I am proven honest.”

Was my silence to this brutality a marriage vow? Is this suffrage a moral obligation? Will raising my voice against this cruelty makes me less of a good wife? I guess it should be quite.

Marriage is a bound between two souls where they vow each other to treat with love, affection and humanity. They share a consent to have a right on each other. But how far is this right misinterpreted? Marital rape is defined by any unwanted sexual acts, by a spouse or ex-spouse, committed without consent or against a person's will, obtained by force, or threat of force, intimidation, or when a person is unable to consent. There are various types of rape, including battering rape, force-only rape and obsessive or sadistic rape.

Marital rape exists in the data, but not in law because our country has still not criminalized marital rape and so we don't acquire such strong laws which could saves millions of wives from this cruelty. Rape is defined under section 375 of Indian Penal Code, 1860 but marital rape has no legal stand of its own.

There are different kind of marital rape. Starting with Forceful sex where the male forcefully enters into sexual intercourse with the women without her willingness. It includes battering rape, obsessive rape etc. Then comes sexual coercion in non-physical, where the male threaten or make false promises to end their marital status. It is majorly a verbal abuse non-physical manner to get into sexual contact without the consent of the female.

Laws favouring Marital Rape are Section 375 of Criminal Law (Amendment) Bill, 2013 is an anti-rape bill which defines sexual offences and acts which are strictly considered and followed.

There are various social activists and NGO'S which helps women who are suffering through marital rape and consults Domestic Violence Act, 2005 but are still unsuccessful to call marital rape as a serious crime.

Protection of Women from Domestic Violence Act, 2005 consist the reasonable civil remedies for the violence against women which includes marital rape too.

On a global level, Ghana, India, Indonesia, Jordan, Lesotho, Nigeria, Oman, Singapore, Sri Lanka, and Tanzania expressly allows spousal or Marital Rape. In four of these countries, it is permitted even when the victim is a child.

Ghanaian law, for example, states that “consent given by husband or wife at marriage, for the purposes of marriage, cannot be revoked,” unless the parties are divorced or legally separated. And spousal



rape is only illegal if the perpetrator also uses abusive language, violence, or threats. Supreme Court's recent judgment states that sexual intercourse with wife below 18 years is rape so why not forceful sex with your wife be marital rape?

Keywords: Marital Rape, Sexual intercourse, Forceful sex, Rape, Domestic violence, Sexual offence.

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defined under section 375 of Indian Penal Code, 1860 but marital rape has no legal stand of its own as per now.

Rape is defined as:

"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 to 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 to do so with him or any other person; or

Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any of 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 years of age.

Seventhly.—when she is unable to communicate consent. Explanation I.—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 willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception I.—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".¹

Kinds of marital rape

There are majorly three categorised kinds of marital rape broadly described as-

Force only rape

This kind of rape happens when the abuser desire to exert its power and control over the female. This form of rape is common where there is a larger contrast between the physical size and strength of abuser and victim, or in abusive relationships where physical violence is infrequent or non-existent.

Violent Rape

This kind of rape is defined as when the abuser uses extreme physical force to injure the victim; such physical abuse could result in injuries on the physical parts i.e. Genital areas and breast. Such assault includes physical violence by punching or beating or rape with physical assault. A wife due to such shameful act goes through immense humiliation and pain which becomes a part of their lives.

Obsessive and Sadistic Rape

This kind of rape takes the humiliation a female experience, to another level as the abuser rapes the victim by shameful means Mike, urinating on the female, acting out of fantasy and torcher or using objects during rape.

Status of Marital Rape in India

Every human being irrespective of his or her sex, has a certain right and authority over his or her own body. As stated in Indian Penal Code, Section 375- "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape." This section naturally takes away this right and authority which is unfair, unjust and undue. There are some laws or rules or to be more specific "orthodox regulations" which needs to be changed and updated with time. The laws which make "Woman the Property of Man" and encourage such things needs to be changed. While most of the developed world has penalized marital rape, surprisingly, there is no law to protect married women against Marital Rape in India. Marital rape can't be made a Criminal Offence in India because of high illiteracy rate, poverty, extreme religious beliefs and the very 'sanctity' of marriage. Marriage in India is, among other

¹ The Indian Penal Code, 1860. Section 375.



things, a sexual contract because it gives the man implied consent to sex in perpetuity. It reinforces the man's "ownership" rights over the wife. This denies the woman any agency over her own body, its sexuality and its reproductive function. Refusing to criminalise marital rape is to accept that sexual coercion against a woman, so long as it is within a marriage, will be endorsed by both government and society. If women are to wrest control of their lives, they have to have the right to say no to their husbands without being socially penalised for it. The myth of the 'wifely duty' and the 'conjugal right' must end because marital sex, as all sex, must be with mutual consent and pleasure.

The best way that the law protects women subjected to marital rape is by charging the husband with a minor offence of cruelty, the punishment of which goes up to three years in jail or a fine. In worse cases, she can seek restraining order and protection under domestic violence legislation. 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, the mind-set of the society to treat the marriage as a sacrament. The court in a case said "Defence counsel rightly argued that IPC does not recognize concept of marital rape. If complainant was a legally wedded wife of accused, the sexual intercourse with her by accused would not constitute offence of rape

even if it was by force or against her wishes"²

The UN Committee on the Elimination of Discrimination against Women in February 2007. The CEDAW Committee has recommended that the country should "widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception of marital rape from the definition of rape."³

When society makes theft or murder a punishable offence, it does so not because everyone is a potential thief or murderer but to protect everyone from the few thieves and murderers. Are these laws misused? Yes they are, all of them, and with a great frequency.

Despite the historical myth that rape by one's partner is a relatively insignificant event causing little trauma, research indicates that marital rape often has severe and long-lasting consequences for women. The physical effects of marital rape may include injuries to private organs, lacerations, soreness, bruising, torn muscles, fatigue and vomiting. Women who have been battered and raped by their husbands may suffer other physical consequences including broken bones, black eyes, bloody noses, and knife wounds that occur during the sexual violence. Specific gynaecological consequences of marital rape include miscarriages, stillbirths, bladder infections,

²[The Life and Times of an Indian Homemaker](#)

³ <http://nlrd.org/wp-content/uploads/2013/01/121798698-Justice-Verma-Committee-report.pdf> visited on 31.5.2013



infertility and the potential contraction of sexually transmitted diseases including HIV

Laws relating to Marital Rape in India

Sir Matthew Hale, Chief Justice in 17th Century England. Lord Hale wrote that: ‘the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual consent and contract, the wife hath given up herself this kind unto her husband which she cannot retract’

But this statement cannot be considered appropriate as it has no case laws or argument to base the view. Indian laws are advanced but not yet so strong to stand on its own and be capable to criminalize marital rape in India.

So, present laws favouring Marital Rape are **Section 375 of Criminal Law (Amendment) Bill, 2013** is an anti-rape bill which defines sexual offences and acts which are strictly considered and followed. There are various **social activists** and **NGO'S** which helps women who are suffering through marital rape and consults **Domestic Violence Act, 2005** but are still unsuccessful to call marital rape as a serious crime.

In the **42nd Report by the Law Commission** it was recommended that criminal liability should be attached to intercourse of man with his minor wife. However, the Committee refused the recommendation stating that husband cannot be guilty of raping his wife of whatever age since sex is a parcel of marriage. Further in 1983 with addition of Section 376A IPC, rape of judicially separated wife was criminalised.

Protection of Women from Domestic Violence Act, 2005 consist the reasonable civil remedies for the violence against women which includes marital rape too.

On 23rd August, 2005 Smt. Kanti Singh gave a speech on ‘the motion for consideration of the protection of women from Domestic Violence Bill, 2005’ in which she stated “All acts of gender-based physical and psychological abuse by a family member against women in the family, ranging from simple assault to aggravated physical battering, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal use, forcible or unlawful entry, arson, destruction of property, sexual violence, **marital rape**, dowry or related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed ‘Domestic Violence’.” So, all these could be included in the ambit of the law. There is nothing wrong in that. There is a wide range of assault on women. When we consider the historical facts and also what is existing now, I think, this law will do some justice.

Case Laws relating to Marital rape in India

Independent Thoughts vs. Union of India
The exception to marital rape, as applicable to minor girls, was declared unconstitutional for violating two fundamental rights: Article 14 and Article 21 Constitution of India. The Supreme Court has stated in its judgment that:-

“It must be remembered that those days are long gone when a **married woman or a married girl child** could be treated as subordinate to her husband or at his beck and call or as his property. Constitutionally



a female has equal rights as a male and no statute should be interpreted or understood to derogate from this position. If there is some theory that propounds such an unconstitutional myth, then that theory deserves to be completely demolished.”⁴

“The right of a girl child to maintain her bodily integrity is effectively destroyed by a traditional practice sanctified by the IPC. **Her husband, for the purposes of Section 375 of the IPC, effectively has full control over her body and can subject her to sexual intercourse without her consent or without her willingness since such an activity would not be rape.**”⁵

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 these cases. Thus the exemption stands in contradiction with the IPC provision.

205th report on the prohibition of child marriage

The Union of India should be directed to amend the laws relating to age of marriage and minimum age of giving sexual consent so that both are in conformity with each other. The petition prays for deletion of the explanation under section 375 IPC under which marital rape is not considered rape unless the wife is under 15 years of age. Provision relating to sexual intercourse with one's own wife, the NCW suggested that "marital sexual intercourse by

a man with his own wife without consent should also be considered as sexual assault.”⁶

Bhupender Singh V/s Union Territory of Chandigarh

In a decision relied on by the counsel, the Supreme Court stated that though there was ceremony of marriage between the complainant and the accused, the accused was already married refused to examine the allegations in the complaint as marital rape⁷ Post the case of **Maneka Gandhi v. Union of India** it has become the source of all forms of right aimed at protection of human life and liberty.⁸

Marital Rape: World status

Poland adds the list to recognize Marital Rape as a criminal offence in 1932. Australia, in seventies was another country to pass reforms in 1976 that made rape in marriage a criminal offence. Two decades before that, Scandinavian countries like Sweden, Norway, Denmark, and former soviet union and Czechoslovakia passed laws that criminalized spousal rape.

Since this implementation, several countries like South Africa, Ireland, Canada, The United States, New Zealand, Malaysia, and Israel have abolished Marital Rape in the 80's. Between 1970s and 1993; all fifty states in USA made Marital Rape a Crime. European Parliament's resolution on Violence against Women of 1986 called for criminalization of spousal rape which was done soon after by several nations including France, Germany, Netherlands, Belgium and Luxembourg. House of Lords in the UK struck down its common law principle that a

⁴*Independent Thought*, p. 52, para 82.

⁵*Independent Thought*, p. 56, para 88.

⁶The Universal Declaration of Human Rights, 1948

⁷AIR2008(8) SCC 531

⁸ AIR 1978 SC 597



marriage contract implied a woman's consent to all sexual activity and made it a criminal offence.

In 2002, Nepal recognized Marital Rape as a criminal offence after its Supreme Court held that it went against the constitutional right of equal protection and the right to privacy. Ghana, India, Indonesia, Jordan, Lesotho, Nigeria, Oman, Singapore, Sri Lanka, and Tanzania expressly allows spousal or Marital Rape. In four of these countries, it is permitted even when the victim is a child.

Ghanaian law, for example, states that "consent given by husband or wife at marriage, for the purposes of marriage, cannot be revoked," unless the parties are divorced or legally separated. And spousal rape is only illegal if the perpetrator also uses abusive language, violence, or threats.

Our view concerning marital rape

Rape is forcible seizure, or the ravishment of a woman without her consent, by force, fear, or fraud. It involves coercive, nonconsensual sexual intercourse with a woman. Rape can be viewed as an act of violence on the private parts of a woman, and outrage by all means. It's even more shocking how our society tries to normalize the sexual violence committed on wives. It is like an invisible sexual bondage, where one party decides the terms and conditions, and the other party agrees to perform. But if you decide to speak up against it, society will have issues with your culture. India's most ancient cultural heritage of Veda must be thoroughly recollected in the context. The concept is marriage is ever sacred and it has been strictly advised to carry on the relation only for procreation not for exploitation of

dignity of woman or unusual indulgence to satisfy the carnal appetite because of the self-made superiority of the male community destined to go to their doomsday of consciousness because of wrongful utilization of the highest evolved being of creation as man. Marital rape is violation of Fundamental Rights and of Human Rights. Most of the developed countries have amended and repeals the exemption of marital rape. This repealment should also be made effective in India and marital rape should be criminalized under Indian Penal Code, 1860 as recommended in 172nd Law Report

Secondly, the very definition of rape (section 375 of IPC) demands change. The narrow definition has been criticized by Indian and international women's and children organizations, who insist that including oral sex, sodomy and penetration by foreign objects within the meaning of rape would not have been inconsistent with nay constitutional provisions, natural justice or equity. Even international law now says that rape may be accepted as the "sexual penetration, not just penal penetration, but also threatening, forceful, coercive use of force against the victim, or the penetration by any object, however slight." Article 2 of the Declaration of the Elimination of Violence against Women includes marital rape explicitly in the definition of violence against women. Emphasis on these provisions is not meant to tantalize, but to give the victim and not the criminal, the benefit of doubt.

According to our society, it is not culturally possible for an Indian woman to get 'raped' by her husband, even if she dies screaming 'no'. I personally fail to understand this



argument. How can rape be a part of any culture? It's a deviance of social culture and the state has a responsibility to address it. Also, just because something is not a part of our culture, does that mean it's not a reality? Theft, murder or burglaries, none of them are a part of our culture, but do we deny their occurrence, justifying that they are not parts of our culture? No, we don't. Rather, we try to legally address these issues. Why do we connect culture with crime? Clearly, to dilute the crime, as the state has no interest in making the husbands angry.

Conclusion

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. Rape is rape and marriage cannot be an excuse for committing such a heinous offence. 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. If the reformers see rape as a crime against a woman and her person and bodily integrity and humanity, then marital rape and its punishment would be a legal possibility.

“I say nothing, not one word, from beginning to end, and neither does he. If it were lawful for a woman to hate her husband, I would hate him as a rapist.” – Philippa Gregory
