



# MARITAL RAPE: AN UGLY TRUTH OF LIFE OF WOMEN

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*“The day will come when men will recognize woman as his peer, not only at the fireside, but in councils of the nation. Then, and not until then, will there be the perfect comradeship, the ideal union between the sexes that shall result in the highest development of the race.”*

– Susan B. Anthony

Violence against women is a manifestation of historic power play struggles between men and women, which has led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men<sup>2</sup>. Marriage, also called matrimony or wedlock, is a socially and legally recognized union between spouses that establishes rights and obligations between them, their children, and their in-laws<sup>3</sup>. According to ancient Hindu scriptures religious rite cannot be performed with perfection by a man, if his wife is not participating in that. Therefore, participation of wife is essential in any religious rites and known as ‘Ardhangani’. They are not only supposed to be given importance rather equal position with men. But position of women is deteriorating in recent times.

The idea of the “sacrosanct” institution of marriage in India is contrary and far away from women’s position of reality. The ugly truth of crimes like marital rape, domestic violence etc are hidden under the veil of institution of marriage. Indian women are subjected to many criminal atrocities like Rape, Domestic Violence, sexual harassment, trafficking and forced prostitution. It is just a small list of a never ending crime against women. Marital rape is not legally recognized as a crime in India and therefore, there is no penalization for the same. Marital rape means sexual intercourse between a man and a woman, who are legally husband and wife of each other, and the woman does not give consent for such intercourse. Marital Rape also known as Spousal Rape or Inmate Partneris a rape committed by one spouse against the other<sup>4</sup>. Marital rape is non-consensual sex in which the perpetrator is the victim’s spouse. As such, it is a form of partner rape, of domestic violence, and of sexual abuse<sup>5</sup>. Marital rape is sexual assault in marriage or marital sexual assault<sup>6</sup>. Marital rape is any unwanted sexual acts by a spouse or ex-spouse, committed without consent and/or against a person's will, obtained by force, or threat of force, intimidation, or when a person is unable to consent. These sexual acts include intercourse, anal or oral sex, forced sexual behavior with other individuals, and other sexual activities that are considered by the victim as degrading, humiliating, painful, and unwanted.<sup>7</sup>

In institution of marriage, man and woman vow to live together in happiness as well as in pain by greeting the flaws of each other. It gives right to the husband and wife to lawfully consummate their marriage, which is

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<sup>2</sup>The United Nations Declaration on the Elimination of Violence against Women, General Assemle Resolution, December, 1993

<sup>3</sup>Haviland, William A.; Prins, Harald E. L.; McBride, Bunny; Walrath, Dana (2011). Cultural Anthropology: The Human Challenge (13th ed.). Cengage Learning.

<sup>4</sup>Marital Rape, available at : <http://rapeinfo.wordpress.com/2008/05/25/marital-rape/>

<sup>5</sup>Rashed Ahmed1, Nusrat Jahan Shaba2, Critical Analysis on Marital Rape and Its Legal Consequences: Bangladesh Perspective, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 21, Issue 6, Ver. 2 (June. 2016) PP 08-13, [www.iosrjournals.org](http://www.iosrjournals.org) DOI: 10.9790/0837-2106020813

<sup>6</sup>Dr. R. Revathi, Law relating to Domestic violence, 2<sup>nd</sup> ed., Asia Law House Hyderabad, p. 4

<sup>7</sup>Marital Rape, <https://www.lawteacher.net/free-law-essays/family-law/marital-rape.php>. (Visited n 11, Nov2017)



considered as a necessary requisite after the marriage has taken place. Marriage is a stable relationship in which a man and a woman are socially permitted to have children implying the right to sexual relation.<sup>8</sup>

According to Morton Hunt, "The typical marital rapist is a man who still believes that husbands are supposed to "rule" their wives. This extends, he feels, to sexual matters: when he wants her, she should be glad, or at least willing; if she isn't, he has the right to force her. But in forcing her he gains far more than a few minutes of sexual pleasure. He humbles her and reasserts, in the most emotionally powerful way possible, that he is the ruler and she is the subject."<sup>9</sup> Section 375, Indian Penal Code, 1860, states that sexual intercourse with a woman would be constituted as rape if it is against her will or without her consent. If the consent of the woman is obtained by coercion or causing apprehension of grievous hurt or death, it will also be called rape. If a man fraudulently makes the woman believe that he is her husband and has intercourse with her, then also it is rape. If a man has sexual intercourse with a woman who is unable to give consent due to unsoundness then also it would constitute offence of rape. Sexual intercourse with a girl who is below sixteen years would also constitute rape even if the girl consented for such intercourse. Exception clause to Section 375, Indian Penal Code 1860, mentioned that "Sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape." It gives clear preference of the rights of the husband over his wife against the wife's right to herself. It can be clearly seen from exception to this section which does not acknowledge a wife being raped by her husband, if she is above 15 years of age. The Indian Penal Code does not recognize marital rape as atrocious by not having a provision for it. The court in a case said "Defense 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".<sup>10</sup>

The main reason behind this gender inequality is our patriarchal and male dominated social system which leads to the suppression of the female in the society. Another reason is the traditional role, in which Women are expected to be in the role of a "pativrata stri" which means a pure, faithful and obliging wife. After marriage women are treated like a piece of property which is acquired by the husband. All these social norms and traditions gives the male ego a boost which leads to superiority complex in them, this causes men to start believing that they can do anything with their wives and that consent to sex is impliedly given when she agrees to marry him. So when after marriage, if the wife refuses to have consensual sex, they believe there's nothing wrong in forcefully having sex with her. But what men forget in these situations is that any type of sex which is not consensual is called rape, and they knowingly or unknowingly are repeatedly raping their wives. Not having legislation against marital rape is biggest reason that men don't think twice before raping their wives. Thus if a wife files a complaint against her husband she will have no specific legal remedy.<sup>11</sup>

The exception to Art. 375 permits a man to have sexual intercourse with his wife without her consent is infringement of Article 14 and Article 21 of the Constitution. Even in *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>12</sup> the Supreme Court said that 'rape is a crime against basic human rights and a violation of the victim's most cherished of fundamental rights, namely, the right to life enshrined in Article 21 of the Constitution.' Yet the current law negates this very pronouncement by not recognizing marital rape, thus, directly violating the Right to life with dignity under Article 21.<sup>13</sup>

Women are at particularly high risk for being raped by their partners under the following circumstances:

- Women married to domineering men who view them as 'property'
- Women who are in physically violent relationships
- Women who are pregnant

<sup>8</sup>Meaning of Indian marriage, available at :<http://vapsoft.org/meaning-of-indian-marriage/>

<sup>9</sup>Morton Hunt, "Legal Rape," *Family Circle* (January 9, 1979), p. 38./

<sup>10</sup>The Life and Times of an Indian Homemaker, available at : <https://indianhomemaker.wordpress.com/2012/12/04/why-is-forcible-sex-or-lack-of-consent-not-rape/>,

<sup>11</sup>Ayush Choudhary, *Marital Rape: A Crime Undefined*, <https://www.lawctopus.com/academike/marital-rape-a-crime-undefined/>

<sup>12</sup>(1996)1 SCC 490

<sup>13</sup>Udisha Ghosh, *Marital Rape: The Need for Criminalisation in India*, <https://www.lawctopus.com/academike/marital-rape-need-criminalisation-india/>



- Women who are ill or recovering from surgery
- Women who are separated or divorced

It is a myth that marital rape is less serious than other forms of sexual violence. There are many physical and emotional consequences that may accompany marital rape:

- Physical effects include injuries to the vaginal and anal areas, lacerations, soreness, bruising, torn muscles, fatigue, and vomiting.
- Women who are battered and raped frequently suffer from broken bones, black eyes, bloody noses and knife wounds.
- Gynecological effects include vaginal stretching, pelvic inflammation, unwanted pregnancies, miscarriages, stillbirths, bladder infections, sexually transmitted diseases, HIV, and infertility.
- Short-term psychological effects include PTSD, anxiety, shock, intense fear, depression and suicidal ideation.

Long-term psychological effects include disordered sleeping, disordered eating, depression, intimacy problems, negative self-images, and sexual dysfunction.<sup>14</sup>

### TYPES OF MARITAL RAPE

The following are three kinds of marital rape which are generally prevalent in the society:

1. **Battering rape:** In battering rape, women experience both physical and sexual violence in the relationship. Some are battered during the sexual violence, or the rape may follow a physical violence where the husband tries to make up and coerces his wife to have sex against her will.
2. **Force-only rape:** In force-only rape, husbands use only the amount of force which is necessary to coerce their wives; battering may not be characteristic of these. These assaults are mainly used after the woman has refused sexual intercourse relationships.
3. **Obsessive rape:** Sadistic or obsessive rape includes torture and/or perverse sexual acts and are often physically violent.
4. **Anger rape:** is means of retaliation and humiliation and to hurt the victim.
5. **Power rape:** is motivated by desire to assert dominance and control

In the 42<sup>nd</sup> Report of Law Commission it was recommended that a man should be criminally liable having sexual intercourse with his minor wife. However, the recommendation was refused by stating that husband cannot be guilty of raping his wife of whatever age since sex is a parcel of marriage. Further in 1983, Section 376A IPC was added, due to which rape of judicially separated wife was criminalised.

Verma Committee, a three-member panel appointed to strengthen India's sexual-assault laws in 2012 also gave suggestion to criminalizing marital rape. The Justice Verma committee had suggested that marital rape should be made an offence, a key demand of women's rights activists<sup>15</sup>.

. According to the committee, rape within marriage and outside marriage should be differentiated. Under the IPC sexual intercourse without consent is prohibited but exception to the offence of rape exists in relation to unconsented sexual intercourse by a husband upon a wife. The Committee gave recommendation that the exception to marital rape should be removed and marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant.<sup>16</sup> Proposal was rejected by the then government, led by the Congress party and new sexual-assault law was passed by the government which did not criminalize marital rape in 2013.

<sup>14</sup>Raquel Kennedy Bergen, Elizabeth Barnhill, Marital Rape: New Research and Directions, <https://vawnet.org/material/marital-rape-new-research-and-directions>

<sup>15</sup>Ashish Mukherjee, Rape law ordinance, ndtv.com, Updated: February 02, 2013 13:48 IST

<sup>16</sup>Government of India, Report: Justice Verma Committee, (Ministry of Home Affairs, 2013).



The Supreme Court ruled that sexual intercourse with wife below 18 years of age will be considered rape. In the case *Independent Thought v. Union of India*, the Centre told the Supreme Court bench consisting of Justices Madan Lokur and Deepak Gupta that it stands by Exception 2 of Section 375 of the IPC to provide protection to the husband, his minor wife and the sanctity of their conjugal relationship. *Independent Thought*, a non-governmental organisation, in a petition in 2013, had challenged Exception 2, which states that sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape. However, there is a discrepancy within the same provision. It states that a man is said to commit rape who has sexual intercourse with a woman with or without her consent, when she is under 18 years of age. *Independent Thought's* plea to the judiciary was simple: It urged that all minors be protected from rape under Section 375, irrespective of marital status.<sup>17</sup>

#### CONCLUSION

In India, Marital Rape has never received the attention of lawmakers. If a woman who is under 16 years of age has non-consensual sex, then it will constitute offence of rape and just because she is married and even though her husband forcefully has sex with her then it isn't rape. The idea of a married woman being raped by her husband, and she cannot seek protection under any law in India is very fateful. Rape is rape and marriage couldn't become an excuse for committing such a heinous offence. It is necessary that there should be more awareness among women. The first step to stop such an offence is to empower and educate the women to stand up against such inhumane acts. The immediate need is criminalization of marital rape under the Indian Penal Code. There is also a need to educate the society about the crime, because the real objective of criminalizing marital rape can only be achieved if the society acknowledges and challenges the existing myth that rape by spouse is inconsequential.

"A woman with a voice is by definition a strong woman. But the search to find that voice can be remarkably difficult."- Melinda Gates

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<sup>17</sup>India Deya Bhattacharya, <http://www.firstpost.com/india/sc-says-marital-rape-cant-be-considered-criminal-tradition-doesnt-justify-assault-child-marriage-3917749.html>