



## MARITAL RAPE: LEGAL, SOCIAL, AND PSYCHOLOGICAL DIMENSIONS

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### **ABSTRACT**

*The purpose of this article is to find out how marital rape is a social evil that is present in Indian society and the various aspects of it such as how religion plays a significant role in it and how it affects the victim psychologically, mentally, and physically. Additionally, this article also gives attention to the history of marital rape which plays the role of understanding how the concept of spousal rape was not even considered or thought up until the 19<sup>th</sup> century. The role of the judiciary and legislative are of much importance if we want to tackle this social evil and first and foremost it is to aware the people of the country aware that such a concept is present in the society and this is wrong to the fundamental level of a human being. Also, that marriage is not a license to rape and consent is a vital aspect even after marriage. The main objective of this article is for people to get to know that the sacred institution of marriage has many flaws in it that it is not perfect and it's the role of society to eradicate such social evils.*

### **INTRODUCTION**

Rape is a serious wrongdoing that disregards a person's most essential privileges, including the right to life and individual freedom. It is a heinous act that must be condemned and a flagrant violation of fundamental human rights. Conjugal assault is a type of assault that is like some other kind of assault, as it includes undesirable and constrained sexual contact. The only difference is that it takes place between married people. A type of rape known as marital rape or spousal rape occurs when a partner is forced to have sex with another person against their will. The victim's rights have been violated, and this is a serious crime.<sup>1</sup>

According to the idea of the common folk of the Indian subcontinent, it could be said that various customs, and rituals are backed by religion and interpreted by the patriarchal society

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<sup>1</sup> <http://Conservapedia.com/Marital-rape>

and additionally used to suppress women in various ways. The most talked as well as controversial yet fundamental idea is the consent of a woman. Various provisions grant legal immunity to Indian husbands by stipulating that "sexual intercourse or acts by a man with his wife, provided she is not under 18 years of age, do not constitute rape". Additionally, as the debates around marital rape and the consent of a married woman are now discussed it brings up various fundamental questions such as that does marriage mean a lifetime consent of a woman? Can this presumption of consent be rescinded in instances of sexual abuse within the marital bond? We also have to look at the other side of the coin which would be that section 377 of the IPC was repealed due to its misuse by the woman majorly in the case of divorce which was later used to get a better alimony as there was no logical or rather practical way to find out as to if that particular act happened other than the testimony of the involved people.

One of the main aspects played in not criminalizing marital rape is that of religion as per the Brahmachari Dayanand, the seer at Matri Sadan ashram, Haridwar statement the concept of marital rape is new to the Hindu religion and that is not even discussed in any Purana or epics. The Hindu religion does talk about a woman being unhappy in her family but does not particularly deal with the idea of marital rape. Rape has a punishment in Garud Purana as per Brahmachari Dayanand that of a strict intensity and the family where the woman is unhappy is bound to be doomed. The idea of marital rape is very farfetched according to the Hindu religion as the bond of marriage is considered the highest of purity and pioussness where the woman is to be treated as "Goddess Lakshmi".

In the religion of Islam where marriage is a sacred and fundamental institution called nikah. The issue of sexual intercourse is discussed in a biased manner where it is interpreted as that a wife(began) must have sex with her husband whenever he demands it and additionally that if a wife refuses husband the act of sexual intercourse other than the exception of illness, she will be cursed by an angel all night if she refuses sexual intercourse with her husband.

In the same view of other religions which include Christianity, Buddhism, and Khalsa all share the same idea that marital rape is not discussed in the religious texts but surely talk about the ill-treatment of wives and condemn husbands who are aggressive and cruel to their wives.

Many cultures and nations have believed that marriage includes conjugal rights throughout history. This view was frequently based on St. Paul's teachings, which stated that husbands should show affection to their wives and vice versa. Additionally, St. Paul wrote that male

partners have rights over their female partners' bodies, but female partners do not have rights over their husbands' bodies. To devote themselves to fasting and prayer, St. Paul advised couples not to dominate each other in sex without mutual consent and for a brief period.<sup>2</sup>

In Indian society, religion plays a great role and it is the general mindset of the people in India that marriage is a license to have sexual intercourse with one's wife whenever a man desires. The idea of consent is not present and additionally, it is taught to young girls that it is their duty to make their husbands "happy" even if they have to sacrifice their happiness.

The view of the author is that social evils are related to society, not religion. The act of marital rape is happening irrespective of the religion of the woman. The National Family Health Survey (2019–2020) showed that 29% of ever-married women had experienced some form of physical or sexual violence from their husbands.<sup>3</sup> The idea is so embedded in the idea of women in India that most women do not even have an idea that the act of sexual intercourse without the consent of their husbands is wrong. A working paper based on a comparison of NFHS and NCRB data indicated that less than 1% of cases of sexual violence by the husband are reported to the police.<sup>4</sup> The facts that pertain to marital rape cases in India or the sexual assault are that of terrifying. A survey carried out in 2010 reported that one in five men reported having ever forced their wives for sex.<sup>5</sup> In another study carried out in rural Karnataka, 36% of the women agreed with the statement that "a husband might force his wife to have sex even if she refuses".<sup>6</sup> These numbers just prove the idea that religion plays less role rather it's society that plays a role in this. Although religion could be a vital way to make aware people of how derogatory and fundamentally wrong this act to a woman is religion is a very persistent and effective way to reach the masses.

The history of the idea of marital rape is that crucial. It was first discussed significantly in the paper "The Markland Letter", which was published in Kansas in 1887 in a newspaper.<sup>7</sup> In the

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<sup>2</sup> INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES [ISSN 2581-5369] Volume 6 | Issue 3 2023

<sup>3</sup> International Institute for Population Sciences (IIPS) and ICF. National Family Health Survey (NFHS-5), 2019-20. Mumbai: IIPS; 2021

<sup>4</sup> Gupta A. Reporting and incidence of violence against women in India. Res Inst Compassionate Econ. 2014;30

<sup>5</sup> Barker G, Contreras M, Heilman B, et al. Evolving men: initial results from the International Men and Gender Equality Survey (IMAGES). Washington (DC): International Center for Research on Women (ICRW) and Rio de Janeiro: Instituto Promundo; 2011

<sup>6</sup> Krishnan S. Gender, caste, and economic inequalities and marital violence in rural South India. Health Care Women Int. 2005;26(1):87–99

<sup>7</sup> HH Judge Peter Rook QC and Robert Ward CBE, Sexual Offences Law and Practice, 4th Edition, London: Sweet & Maxwell, 2010, p.1

letter was a portal of an incident where a man forced himself on his wife who just gave birth and had multiple surgeries. Naturally, the lady was not in the physical or mental condition to have sexual intercourse yet the man ripped her stitches and the graphical representation of the act made it clear that although an exception in law the act was that of rape.<sup>8</sup>

The idea that a man too the partner has conjugal rights over his woman. Women in general up until the late 19<sup>th</sup> century were viewed as commodities that were owned first by their fathers and later by their husbands. The same goes for their rights and how they are slowly coming up and being portrayed and looked at. It was so much that married women were not even a subject of rape laws it was an assumption that just because the woman is married her consent is been given for the rest of her life which is a whole misogynistic idea in its entirety.

The idea that a man and a woman are that different so much so that women do not even have the fundamental right to choose as per the radical patriarchal mindset.

The current scenario is of the patriarchal view. We can see two different views surfacing. In a judgment Justice C, Hari Shankar said that by striking down the exception under section 375 the court would be doing an offense and creating a new class of criminals. *"If the impugned Exception was to be struck down, we would make, ipso facto, the punishments envisaged by Section 376, applicable to such a husband, where the legislature never intended these punishments to apply to him. We, therefore, would be doing something that was never within the contemplation of the legislature, which may be even worse, jurisprudentially, than judicial legislation itself. If the Court is not empowered to prescribe punishments, equally, the Court cannot, by its order, convert an act which, prior thereto, was not an offense, into an offense,"*<sup>9</sup> this could be very well interpreted that the stance of the judiciary is that of towards not changing the law. As the idea of the court behind this could be said it would be hard to figure out when the sexual intercourse between the husband and wife was consensual and when it was forced. We should also consider other scenarios as under the law, a husband can be guilty of abetting the rape of his wife, regardless of her age, and if he were present at that time, he would be deemed to have committed rape itself despite the fact he is exempted from the offense itself as per the section 376 of the IPC read with section 109 of the Ipc.

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<sup>8</sup> SUPRA 1

<sup>9</sup> Striking Down Marital Rape Exception Will Result In Creation Of New Offence: Justice C Hari Shankar Differs With Justice Shaktiher by Nupur Thapiyal (live law)

Although this raises another question for the judiciary as well as the legislative as to just because a said justice is hard to deliver it cannot and should not be denied on that pretense. The use of law effectively and judiciously is the duty of the judiciary and making the law such is the duty of the legislative.

The view of the common folk is in favor of criminalizing the act of marital rape as it is fundamentally and humanly wrong for the wife to go through that much pain and agony. The Indian legislature may be able to significantly reduce the act of marital rape. Nonetheless, still, there are still various instances regularly. Society at large is also to blame for this as for one the idea of consent of a woman is not taught to the common folk and it is just assumed that the woman must satisfy her husband every time he demands it. Additionally, the Indian legislature is also of the idea that making the act of marital rape a crime would be of a negative impact on the society.<sup>10</sup> The idea of divorce is so much of a taboo still persistent in India that instead of the divorce rating going up the government and the people expect the woman of the nation to suffer.

The idea is that just because a relationship between two people allows the man or the woman to also in that regard take any sort of non-consensual favors from the other. Just a bond does not strip the woman down of her basic and fundamental human right of consent and right of choice and give the man immunity to do anything. That idea is both ideally and morally of a wrong nature.

According to the National Coalition Against Domestic Violence (NCADV), marital rape is four times more common than stranger rape, yet there is not much awareness about it.<sup>11</sup> As per a study, only 1 percent of cases of marital rape are reported this shows the lack of awareness and the common unsaid acceptance of marital rape by society. The impact is not just physical but psychological also which is so much deeper and stays longer with the woman. Nonconsensual sex for a lot of women is a traumatic experience as it is not just the idea of sexual intercourse in the ambit of marital rape are also the rough and inhumane acts of lust that are done by the husband or the partner which are much more traumatic. There are several cases from rural India where in extreme cases the victim has died because of the bleeding and injuries of rough and so-called "fantasies" of the husband. Yet these acts are not covered in the ambit

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<sup>10</sup> Azam, Sahil. (2019). Refusal To Recognise Marital Rape Implies We Value Institution of Marriage Over Lives of Women. Retrieved January 19, 2020

<sup>11</sup> The Effects of Marital Rape on a W act of Marital Rape on a Woman's Mental Health s Mental Health Brisa Victorio San Jose State University

of rape or sexual offenses just because of a relation. A woman is to suffer for the rest of her life being abused and I would say molested just because she was in many cases forced to marry and have sexual intercourse with a man without their will.

The psychological impact of marital rape is additionally more traumatic because of the bond between the woman and the man which is auspicious. On one end in the vows of marriage, the man is vowed to protect the woman from any harm caused to her and her modesty. Then the same said man comes home every day and forces his wife under the assumption that marriage is not a sacred bond but a "license to rape". This is an auspicious bond in the eyes of religion as well as society but it is most certainly not treated as so which is why marital rape is talked o much. And this is the reason that the rape is done by a person which the woman is supposed to trust and be with her for the rest of her life which makes it a more traumatic and agony-filled experience.

Additionally, the police officials are also not trained enough and often refuse to lodge complaints of marital rape under the explanation that there are no laws specifying this "act". Although they should be suggesting to report the complaint under different provisions of domestic violence or ill-treatment. They also often handle the matter in an insensitive manner and use rather harsh language and dismiss the idea of rape in a marriage. Which further leads to more trauma for the victim. The survivors of marital rape are often unaware or lack access to mental health treatment which further affects them.

We should also look at another perspective that is of vital importance which is the patriarchal or rather the perspective of folk which is somewhat against the idea of criminalizing marital rape. The idea that what happens between a man and a woman in their own private space is one that cannot be determined by anyone. This would lead to false allegations which is the biggest concern of people. However, no law should be denied based on potential misuse, as every legal provision is subject to abuse, but that does not justify denying justice to genuine victims. Many victims are rural women who face grave problems such as societal backlash and as they are economically also dependent on their husbands it leads to more complications.

In the matters of women's laws in India, just the statement of a woman is necessary enough for conviction which would cause many problems according to the judiciary and people although in my opinion there could be provisions made by the legislation that could help prove the innocence of the man such as the character definition and other.

The government in this case is taking time to criminalize the heinous act of marital rape it should by providing some relief to the victims of it. To eradicate the social evil of marital rape or non-consensual sexual intercourse the government should be making people aware especially in the rural parts of India. As that is where mainly the acts of marital rape are normalized as well as mostly practiced.

In conclusion, marital rape is a reminder to every one of us that various social evils are lingering in our society and many of which we are unaware of as well. It is not merely a legal issue but a moral and humanitarian one that demands urgent attention. By criminalizing marital rape, India can take a significant step toward dismantling patriarchal structures and affirming the fundamental rights of women. The various problems that are faced by people and especially women are not just marital rape but all the aspects of society. Marital rape is just a justification for rape. The various psychological, mental, and physical violence that is faced by women in an institution of marriage is beyond humane. We should as a society for one accept that the practice of marital rape is existent in society and that the concept is very much wrong. Marital rape should be criminalized and put at a higher intensity of crime than rape as it is done by a trusted person which makes it more agonizing and mentally draining.