

Marital Rape: Legal and Social Perspective

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Abstract

Worldwide, marital rape continues to be a prevalent form of sexual assault and domestic violence, defying growing international condemnation and awareness. Feminist ideologies serve as the foundation for this pervasive affliction, which rips apart victims' trust and stifles their relationships. Gender inequality continues to be prevalent in India, a country where societal norms and legal frameworks frequently fall behind. As opposed to popular belief, matrimony does not confer authorization to commit rape. Legal reforms and societal discourse must commence immediately in order to establish marital rape as a serious transgression and guarantee retribution for those who have been victimized. Advocates for consent and gender equality in matrimony must do more to prevent marital rape and advance the rights of women worldwide. In regions such as India, where gender inequality remains deeply ingrained and societal norms often lag behind legal frameworks, marital rape persists unabated. It's crucial to dispel misconceptions: marriage does not condone sexual violence. Swift legal reforms and active societal discussions are essential to acknowledge marital rape as a serious crime and ensure justice for survivors. Advocates for consent and gender equality within marriage must intensify their efforts to combat marital rape and defend women's rights globally. By prioritizing education, advocacy, and policy adjustments, societies can strive towards eradicating this egregious violation of human rights, fostering healthier and more equitable relationships for all.

Keywords: Domestic violence, sexual assault, gender inequality, intimate relationships, women's rights, trust

INTRODUCTION

Engaging in sexual activity with one's spouse without their permission is known as marital rape or spousal rape. One kind of sexual assault and domestic abuse that happens to married couples is marital rape. While having sex within a marriage was formerly seen as a spouse's right, many nations now view it as rape, which is increasingly illegal and denounced by international accords.

Since the second part of the twentieth century, issues of violence against women have attracted increasing worldwide attention. Nevertheless, marital rape is either illegal but frequently permitted in many countries, or it is illegal but generally accepted in others. Laws are rarely enforced for a variety of reasons, such as the public's ignorance about the prohibition against having sex in marriage without consent or the authorities' reluctance to prosecute the offence. A marriage is, in general, a trusting and

loving relationship. However, due to women's financial and other dependence on males in the feudal patriarchal framework, the relationship has coercive potential. A woman is constantly raped by someone she believes or suspects loves her in marital rape. Marital rape is harmful because it jeopardizes the foundations of a relationship, leaving a woman embarrassed, bewildered, and deceived. With the perpetrator, she shares her personal history, her house, her children, her

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secrets, her anxieties, and her life. Marital rape is therefore a betrayal of this trust. It calls into question the core principles of human relationships [1].

In this case, a man cannot be trusted as a protector, and a woman cannot seek comfort or reassurance from the offender.

Marital rape has long been recognized as a social problem, despite the fact that it has been shrouded in secrecy. According to a United Nations Population Fund survey from early in 2000, two thirds of married Indian women reported that their husbands had forced them into having sex. India's National Family Health Survey [1] (2005–2006), which polled almost 1.25 lakh women across 29 states, discovered that 40% of married women between the ages of 15 and 49 had at least one episode of physical, sexual, or emotional abuse at the hands of their partners.

A 2011 study by the International Center for Research on Women [2] found that one in five Indian husbands admitted to pressuring their partners into having sex. This is a list of numbers. The qualitative research, on the other hand, demonstrates that marital rape and sexual violation is a greater issue than episodic forced or penetrative sex. Furthermore, The National Family Health Survey 5 (2019-21) [3] endeavors to quantify the distressing experiences of married women in India. 13% of married women between the ages of 18 and 49 who have ever been the victim of sexual assault identify a former partner as the perpetrator, while 83% identify their current spouse. This statistic has increased dramatically, particularly during the quarantine caused by the pandemic. Worldwide, one in every three women, particularly those who are younger, are vulnerable to abuse, most frequently at the hands of those in close personal relationships [4].

MARITAL RAPE IS MORE TRAUMATIC THAN THE RAPE BY A STRANGER

Because there is no way out of a marriage relationship, a woman is constantly compelled to live in a condition of menace and terror. Though there is no distinction between a 'sacred' rape committed within a marital relationship and a criminal or violent rape committed by strangers, marital rape is far more brutal, emotionally painful, and harmful because a woman is forced to live with the perpetrator day in and day out for an extended period of time and has no other option. While in one instance, the Delhi High Court ruled that a man accused of sodomizing his pregnant wife should not be granted bail, saying that the victim of marital sexual abuse should not be treated any differently from any other victim just because she is the offender's wife rape victim [5].

MARRIAGE ISN'T A PERMIT TO RAPE

As previously stated, society's widespread incorrect assumption is that marriage is a licence to rape, and that when a woman enters into the tie of matrimony, she willingly consents to be sexually assaulted for the rest of her life. In India, nonconsensual sex inside marriage is not tolerated. It is a culturally sanctioned method of female subjugation. Whether it happens in a public setting or a bedroom, rape is still rape, and policies and processes ought to reflect this.

Blanket consent in marriage is an arbitrary and primitive idea. A man and woman's connection is not a licence to rape. Furthermore, just because rape occurs within the four walls of a home does not mean it is a less violent conduct [6].

WHEN RAISING VOICE IN THE SOCIETY BECOMES IMPORTANT

The arguments against criminalizing marital rape said that it would have devastating consequences for families because women would falsely accuse their husbands. This line of reasoning assumes that, as soon as the legislation is changed, women stuck in sexually abusive marriages will leave their husbands and file criminal complaints against them. This is clearly not the case. As a wife and a victim of

forced sexual assault, it limits a woman the opportunity to seek legal retribution against her assailant and subjects her to terrible physical and mental repercussions. It overlooks the reality that a marriage is disrupted by the husband's violent act of rape, not the wife's later attempts to seek safety via the criminal court system [7].

Many women in abusive relationships keep silent for a variety of reasons, including shame, family honor, a lack of social support, economic and social reliance, and worries for their children, among others, including legal issues and the challenges they encounter in pursuing justice. It is also difficult for a woman to give proof of such a crime or to establish her case against an abusive husband beyond a reasonable doubt. As a result, seeking legal retribution is not an easy task [8]. In many circumstances, patriarchal households do not support women. In such instances, spousal rape and domestic violence are a cost of survival for women. The reasoning also misses the reality that an abusive relationship is already on the point of breaking down; hence, speaking out against brutality in relationships would not hurt the marriage anymore; rather, it may save the marriage from collapsing [9].

THE LEGAL PERSPECTIVE

Forced sex with a judicially separated wife is criminal, according to the Law Commission's 84th report [10], since she is no longer the "wife" (de facto), and thus the husband has no right to forcibly impose his conjugal rights. Instead of preserving a democratic and equal view of marriage, such a restricted approach perpetuated Victorian heritage. Furthermore, the Law Commission ignored this provision of restitution of conjugal rights where the state intervenes in a private relationship between two people to control their role in a bedroom when it suggested in its 172 report [11] that enactment of any law relating to marital rape would lead to excessive interference within marriage.

In India, it is not illegal to rape someone in the bedroom. In India, the laws against marital rape are either nonexistent or extremely complicated, open to interpretation by the courts. Section 375 of the Indian Penal Code (IPC) provides an exemption whereby a man's sexual relations with his own wife, provided that she is not under the age of 15, are not considered rape. Section 376 of the Indian Penal Code stipulates that the rapist should be punished by a fine and imprisonment for a term not to exceed seven years, but not to exceed ten years or portrayal for a duration not to exceed seven years [12].

Unless the victim of the rape is his spouse and she is not under the age of 12, in which case he might face a sentence of life in prison or incarceration for a minimum of seven years.

The Protection of Women from Domestic Violence Act of 2005, which was approved in 2005, views marital rape as a form of local violence. Under this Act, a woman can file for a formal separation from her spouse in court for marital rape. Marital rape is unreasonable because it violates a woman's body and damages her trust and affections, making her unstable and afraid. She renounces her human rights at the hallowed site of marriage.

Nevertheless, there are no laws protecting the rights of married rape victims, and the ones that have been implemented are insufficient [13].

CONCLUSION

To address the issue of domestic violence against women in a comprehensive manner, the journey must begin at home and with each individual. It's crucial to make the house a secure place for women and kids. As a result, the status of women will not change until a dialogue about respect for women and their dignity at home is launched. It is critical to regard marriage as a joint venture. The importance of embracing the notion of consent within a marriage relationship cannot be overstated. To promote the notion of consensual sex, it is necessary to acknowledge that women have a right to control their bodies.

The issue of prejudice and violence inside marriage may be solved by challenging deeply embedded preconceptions, broad entrenched attitude, and questioning biased ideals. Religious belief, politics, and legislation must all embrace an anti-violence attitude. Along with changing the statutory norms, frank talks about what constitutes sexual coercion and violence in marriage are essential. In addition, the judicial system must be reformed while addressing the basic structural inequities that contribute to oppression. It is necessary to rethink legal norms and procedures that favor abusers over survivors.

This repressive system must be changed by one that supports gender equality, sexual autonomy, self-determination, dignity, and physical integrity for women. While changes to criminal laws are a major symbol of women's equality and right to bodily integrity, they must be supported by systemic social and political changes, including measures for women's economic and social independence. Some feminists who think that women's emancipation lies in autonomy and self-determination have voiced concerns about the institution of marriage as a skewed repressive system. As a result, the rising sexual revolution must address emerging difficulties rather than superficial ones such as the misuse of the law or the preservation of marital purity. When it comes to rape inside intimate relationships, the motto "making home safe" must be understood widely.

REFERENCES

1. CAMBELL JC, Alford P. The dark consequences of marital rape. *AJN The American Journal of Nursing*. 1989 Jul 1;89(7):946-9.
2. Heilman B, Hebert L, Paul-Gera N. *The Making of Sexual Violence: How Does a Boy Grow Up to Commit Rape? Evidence from Five IMAGES Countries*. Washington, DC: International Center for Research on Women (ICRW).
3. IIPS IC. *National Family Health Survey (NFHS-5): 2019-21 India*. Mumbai: International Institute for Population Sciences (IIPS). 2021
4. Devastatingly pervasive: 1 in 3 women globally experience violence, WHO (9 March 2021),
5. Nigam S. The social and legal paradox relating to marital rape in India: addressing structural inequalities. Available at SSRN 2613447. 2015 Jun 2.
6. Banerjee D, Rao TS. The dark shadow of marital rape: Need to change the narrative. *Journal of psychosexual health*. 2022 Jan;4(1):11-3.
7. Dhiman A, Bhamra MP. *Changing Dimensions of Criminal Law Edition II*. Ashok Yakkaldevi; 2022 Feb 4.
8. Nigam S. Understanding Justice Delivery System from the Perspective of Women Litigants as Victims of Domestic Violence in India (Specifically in the Context of Section 498-A, IPC). Nigam Shalu (2005) *Understanding Justice Delivery System From The Perspective of Women Litigants as Victims of Domestic Violence in India (Specifically in the Context of Section 498-A IPC)*, Occasional Paper. 2005 Apr 23(35).
9. Lazarus-Black M. *Everyday harm: Domestic violence, court rites, and cultures of reconciliation*. University of Illinois Press; 2024 Feb 12.
10. The Law Commission of India (1980) 84th Report on Law of Rape New Delhi: The Union of India Press
11. The Law Commission of India (2000) 172nd Report on the Review of Rape Laws, New Delhi: the Union of India Press
12. Mehta S. Rape law in India: Problems in prosecution due to loopholes in the law. Available at SSRN 2250448. 2013 Apr 13.
13. Bajpai S, Singh KK. *Marital Rape and Legal Framework in India: A Critical Legal Analysis*. *Supremo Amicus*. 2020;22:54