

Marital rape: A Grim reality? With reference to Indian Society

Dr.Hariom tripathi, Associate Professor & Head Department of Sociology,

T.D. P.G. College, Jaunpur

S. S Shukla

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Abstract

Marital rape is a pervasive and yet often overlooked form of violence within intimate partnerships. Marital Rape is grim issue in Indian Society; In the context of Indian society, where deeply entrenched traditional gender roles and cultural norms exist, tackling the problem of marital rape necessitates a thorough comprehension of its underlying factors, repercussions, and possible remedies. Nevertheless, there is no law that criminalizes marital rape. Many Members of Society deny the existence of marital rape, Any Act Sexual act between a spouse, without the consent of other spouse is not rape but sexual intercourse between the spouse. Section 375 & 376 in Indian Penal Code which defines Rape and Punishment under Rape but The Section Section 375 has an exception which states the following: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape". This exception is based on the Fallacious assumption that woman gives her consent to sexual intercourse when she enters into a marital relationship. This research paper seeks to illuminate the matter of marital rape in India, an issue that has been disregarded for an extensive period by both society and the legal system.

Key words: Rape, Indian Penal Code, United Nation Women Data, National Family Health Survey Statistic, offence.

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1. Introduction

Marriage is a legally recognized and socially acknowledged union of two people, usually with the goal of forming a lifetime partnership. Marriage is often defined by a collection of legal, social, and religious privileges and obligations that vary depending on culture and society. Sociologists have a keen interest in exploring the connection between the institution of marriage and the institution of family due to the historical role of marriages in establishing families, which serve as the fundamental building

block of society. Both marriage and family give rise to socially sanctioned status roles. **Rape is defined as unlawful sexual activity, which usually involves a sexual intercourse and is carried out against the victim's will, either with force or the threat of force, or with a person who cannot give informed consent because She/he is minor, intoxicated, unconscious, or had been deceived.**

2. Historical view

In the course of history, many nations did not consider marital rape to be a crime. In actuality, it was seen as a husband's right to have sex with his wife against her will. This viewpoint stemmed from the concept of coverture, which asserted that once married, a woman's identity and legal rights became intertwined with those of her husband. It was therefore thought that a husband had full sexual autonomy over his wife. Marital rape's legal standing has been evolved through time in many nations.

2.1 Historical Overview of Marital Rape Legislation in India:

Marital rape, which refers to non-consensual sexual intercourse within marriage, has been a longstanding issue in India. However, the legal response to this form of sexual violence has been slow and complex, influenced by cultural and social factors. Looking back at the history of legislation on marital rape provides insights into the legal landscape.

During the pre-independence era, India inherited a legal framework that predominantly considered marital rape a private matter confined within the institution of marriage. Early laws like the Indian Penal Code (IPC) enacted in 1860 did not explicitly criminalize marital rape. Societal norms heavily influenced by patriarchal structures treated wives as the property of their husbands, and marriage was regarded as sacrosanct. In the post-independence period, amendments were made to the IPC and related laws. However, these amendments did not explicitly address marital rape. The concept of consent within marriage was not adequately recognized, reflecting a societal perception that husbands had inherent sexual access rights. The absence of legal provisions criminalizing marital rape was justified in the name of preserving marital harmony and safeguarding the institution of marriage. In recent years, there has been growing recognition of the necessity to criminalize marital rape. Activists, women's rights organizations, and legal experts have advocated for legal reforms aligning India's laws with international human rights standards. However, cultural and societal resistance, as well as concerns about preserving cultural values and traditional gender roles have hindered progress.

2.2 Current Legal Provisions and Challenges:

The existing legal provisions regarding marital rape in India primarily reside in the IPC and the Protection of Women from Domestic Violence Act (PWDVA). Section 375 of the IPC defines rape but includes an exception that exempts non-consensual sexual intercourse between a husband and wife, given certain conditions. This

exception perpetuates the idea of marital immunity, undermining the bodily autonomy and sexual agency of married women.

Challenges arise in prosecuting marital rape cases due to the burden of proof placed on survivors. Proving lack of consent becomes arduous within the private realm of marriage where evidence is often limited. Relying on physical force as the criterion for determining rape undermines the recognition of non-physical forms of coercion and manipulation prevalent in marital rape cases. Another challenge lies in the implementation and enforcement of existing laws. Law enforcement agencies and the judicial system often lack sensitivity and understanding of the dynamics of marital rape. Survivor testimony is frequently discredited, leading to the dismissal or inadequate investigation of cases. The lack of specialized support services such as counseling and legal aid further impedes survivors' access to justice and support.

2.3 International Perspectives on Criminalizing Marital Rape:

Internationally, there has been an increasing recognition of marital rape as a violation of human rights and a form of gender-based violence. Various international human rights conventions and standards, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), advocate for the criminalization of marital rape.

Several countries have criminalized marital rape and taken steps to protect married women from sexual violence within marriage. Examples include Canada, the United States, the United Kingdom, and Australia. These countries recognize the significance of consent within marital relationships and reject the notion of marital immunity. International perspectives and legal frameworks offer valuable insights and benchmarks for addressing marital rape in India. They emphasize the need to recognize marital rape as a distinct offense and ensure that legal provisions align with human rights standards. The experiences and lessons learned from other countries can inform legal reforms, strengthen survivor support systems, and enhance the response of the legal system in tackling marital rape.

Marital rape is now considered a crime throughout most of the world, including areas of South Africa, Europe, and the United States. Nevertheless, in certain countries such as India, marital rape is not recognized as a criminal offense. The shift in the legal status of marital rape only began to occur in the late 20th century. In 1975, the first country to criminalize marital rape was the Soviet Union. Since then, many countries have followed suit, including Canada in 1983, the United Kingdom in 1991, and South Africa in 1993. However, marital rape is still not criminalized in many countries, including India, where it is not recognized as a criminal offense.

International human rights frameworks have indeed recognized the importance of addressing marital rape. The United Nations (UN) acknowledges marital rape as a form of violence against women and a violation of human rights. Violence against

women is defined by the UN General Assembly's 1979 adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty". In addition, CEDAW recognizes that women have a right to a life free from violence and that discrimination against them can result in violence against them.

3. Prevalence and impact of marital rape

A common and underreported instance of gender-based violence is marital rape. Many survivors are reluctant to come out and share their experiences due to the private nature of the crime and the shame associated with it in society. The rate of marital rape is high worldwide, according to data, nevertheless.

3.1 Defining Marital Rape in the Society Purview

To define marital rape within the Indian context, one must consider both the legal and social aspects. Legally, marital rape refers to any sexual intercourse without the explicit consent of one's spouse. However, it is crucial to acknowledge that Indian law does not explicitly classify marital rape as a criminal offense, except in specific situations such as when the wife is below 18 years of age or living apart from her husband. Despite being a severe form of abuse and a violation of human rights, marital rape has not been recognized as a crime in many nations, including India. However, countries such as the United States, Canada, Australia, and several others have classified marital rape as a criminal offense.

3.2 Estimating the Prevalence of Marital Rape in India:

There are many elements to consider while estimating the prevalence of marital rape in India. Underreporting of marital rape is a result of social taboos surrounding talks of sexual violence in marriage, victims' ignorance of their rights, and reluctance to come forward. Accurate prevalence estimation is further complicated by cultural traditions that preserve the sanctity of marriage and silence victims. When in considering the situation in Indian society it is fallacious assume that after marriage one spouse its all the rights relating to economic, social, sexual of the other spouse. The prevalence of marital rape in India has been estimated in a variety of ways by past research and surveys. Despite the fact that some research point to a high incidence rate, others report lower numbers because of methodological restrictions and social stigmas against disclosure. Sometimes it is has seen had some women accepted the atrocious situation, if they stood up for reporting or complaining against the evil act of marital rape which they have suffered, the family irrespective of bride or groom and society stands against them, also there is no criminal punishment for the same. There is no law to protect a spouse from marital rape. To have a deeper

knowledge of the prevalence, it is essential to take into account a variety of data sources, including as surveys, qualitative research, and survivor accounts.

3.3 Data and additional factor about marital rape:

According to estimates released by the World Health Organization (WHO), approximately 1 in 3 (30%) women across the globe have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence at some point in their lifetime. A significant portion of this violence is categorized as intimate partner violence. Globally, nearly one-third (27%) of women between the ages of 15 and 49, who have been in a relationship, disclose experiencing some form of physical and/or sexual violence perpetrated by their intimate partner.¹

Victims of marital rape may experience severe and lasting effects. Marital rape victims frequently feel ashamed and guilty, which can make it challenging them to ask for assistance and support. As they frequently feel afraid to speak out against their abusers, they might also feel isolated and alone. Additionally there are many different physical, psychological, and social repercussions could affect survivors, such as:

- Physical injuries, such as bruises, cuts, and broken bones
- Gynecological problems, such as vaginal infections and sexually transmitted infections
- Unwanted pregnancies and unsafe abortions
- Depression, anxiety, post-traumatic stress disorder (PTSD), and other mental health problems
- Substance abuse and self-harm
- Social isolation, shame, and stigma
- Economic hardship, due to loss of employment or other factors

In addition, a variety of detrimental impacts, such as behavioral and emotional issues, poor academic performance, and long-term psychological damage, may also befall children who watch or experience marital rape. These repercussions may have a long-lasting effect on their development and well-being and may feed violent and traumatic cycles.

3.4 Barriers to Reporting and Underreporting:

Various barriers contribute to the underreporting and reluctance to report marital rape in India. These barriers encompass societal, legal, and individual factors that impede survivors from coming forward and seeking justice. Some key barriers include:

a) Social stigma and shame: Victims often face societal pressure to maintain the facade of a happy marriage, fearing judgment, social exclusion, and blame from their family, friends, and community. The stigma associated with reporting marital rape contributes to the underreporting of cases.

b) Lack of awareness and knowledge: Limited awareness about marital rape as a form of violence, coupled with the absence of explicit legal provisions criminalizing it,

hinders victims from recognizing their experiences as rape. Many victims may be unaware of their rights or the support services available to them.

c) Fear of retaliation and safety concerns: Fear of further violence, reprisals, or retaliation from the perpetrator prevents victims from reporting marital rape. Concerns about their safety and that of their children, financial dependency, and potential loss of support networks contribute to underreporting.

d) Cultural and societal norms: Deeply ingrained gender norms, patriarchal structures, and the perception of marriage as sacred often discourage victims from speaking out against their spouses. Cultural expectations of submission and marital obligations may reinforce the belief that sexual consent is implicit within marriage.

e) Lack of trust in the legal system: Limited faith in the legal system, including concerns about lengthy legal processes, societal biases, and inadequate support services, acts as a deterrent for victims to seek justice and report cases of marital rape. Addressing these barriers to reporting and underreporting requires comprehensive efforts such as awareness campaigns, sensitization programs, legal reforms, and strengthening support services. It is crucial to create an environment where survivors feel safe, empowered, and supported in coming forward to report marital rape and seek justice.

4. Indian Society about Marital Rape

In Indian culture, marital rape is a very delicate and taboo subject. It is seen as a betrayal of the sacredness of marriage and a subject between husband and wife that should remain private. Many people in India think that regardless of a woman's preferences, she must perform her marital obligations, which includes having sex with her spouse. As a result of this patriarchal worldview, marital rape is frequently normalized, and many wives are unaware that they have the right to reject their husbands' advances in a sexual manner.

India is one of the 36 nations that have not yet made marital rape a crime, despite the fact that several nations around the world have officially acknowledged it as a crime. The IPC Section 375 exemption to an undesired sexual encounter between a husband and wife has been hotly debated and contested over the past few years. Rape in any form whether marital or non-marital should be an offence.

The National Family Health Survey (NFHS-4) conducted by the Ministry of Health and Family Welfare in 2015-16 found that 31% of ever-married women aged 15-49 years experienced physical, sexual or emotional violence by their spouse or partner at some point in their lifetime. However, the survey did not specifically ask about marital rape.¹

United Nation data on Countries, which have still not Criminalized “Marital Rape”:

According to the reports of United Nation, There are about 34 countries in the world have not yet criminalized marital rape.

Bangladesh	Pakistan	China	Laos	Haiti	Mali	Senegal	Myanmar	Tajikistan	Afghanistan
India	Congo	Botswana	Iran	Lebanon	Libya	Singapore	Algeria	Mongolia	Sri Lanka
Brunei Darussalam	Malaysia	Uganda	Oman	Cote d'Ivoire	Egypt	Yemen	Ethiopia	Bahrain	Kuwait
Nigeria	South Sudan	Central African Republic							

Source: United Nation Women Data on Countries Where marital Rape is not criminalized.¹

NGOs, the All India Democratic Women's Association, and two individuals recently filed petitions against marital rape. In which the petitions contesting the constitutional validity of the Indian Penal Code (IPC) exemption that shields males from prosecution for marital rape received a divided decision from the Delhi High Court. On February 21, a bench consisting of Justices C. Hari Shankar delivered the judgement and Rajiv Shakti after the orders had been reserved. Both justices granted permission to appeal to the Supreme Court because there are important legal issues at stake.¹

“The protection of women and children is a priority but condemning every marriage as violent and Every man as a rapist is not advisable”, said union minister of women and child development, Smriti Irani, in response to Communist Party of India (CPI) member of Parliament (MP) Binoy Viswam’s on the supplementary query raised on the issue of marital rape in Rajya Sabha. Everything have some pros and cons, many people believe that if punishment for marital rape is introduced, it can be misused for trapping men against false allegation. Today, in India false rape case¹ are also reported such as the Ayushi Bhatia¹ Honey Trapping, Ayushi Bhatia was arrested by urugram police for filing 8 fake rapes cases against 8 men in one year¹. The fact cannot be ignored that false marital rape case shall also be reported but only that this presumption women should not be denied there legal right against atrocious act of marital rape.

More than 150 Countries have criminalized marital Rape but India is still lacking to recognize it, there is available data on the existence of Marital Rape but still it's not a crime, In Short "Marital rape does not exist".¹

Survey Done by National Family Health Survey Statistic of domestic violence

According to the most recent fifth round of the National Family Health Survey (NFHS-5), 32% of Indian women who have ever been married have experienced physical, sexual, or emotional abuse at the hands of their spouses.

Additionally, it was discovered that 25% of married women in the 18-49 age range who have experienced spousal physical or sexual violence report having physical wounds, with 7% reporting eye wounds, sprains, dislocations, or burns and 6% reporting deep wounds, broken bones, broken teeth, or any other serious wounds.

The Indian government keeps statistics for this subset of spousal violence. Furthermore, 5.4% of women in this category reported having engaged in marital rape, according to the most recent National Health and Family Survey (NFHS-4) for 2015–16. "The form of sexual violence most commonly reported by women was that their husband used physical force to have sexual intercourse when they did not want to," says the survey.¹

5. Societal attitudes and cultural norms

Social attitudes are a major contributor to the persistence of marital rape. Women are frequently held accountable for acts of sexual violence committed against them and are frequently expected to yield to their husbands' sexual appetites in many cultures. Numerous societal cultural norms and practices that are widely accepted reflect this attitude. For instance, it can be challenging women to discuss their experiences of marital rape in India due to the culture of silence and shame around sexual topics. Being a victim of sexual assault has a stigma that frequently causes victim blaming and the assumption that the victim must have done something to provoke her husband's behavior. The persistence of marital rape also involves intersections between gender, race, and social class. Women from disadvantaged groups are frequently more likely to experience sexual assault, including marital rape. For example, women from poorer socioeconomic origins may have fewer options for leaving an abusive relationship due to financial reliance, and in some societies, it is accepted for males to employ violence against their wives.

Comprehensive efforts at both the individual and society levels are required to address the problem of societal attitudes and cultural practises that support marital rape. Through education and awareness-raising campaigns, this may entail advancing gender equality and combating damaging cultural norms.

5.1 Lack of awareness and education:

Lack of awareness and education is a significant obstacle in addressing marital rape. Many people, including survivors, may not be aware that non-consensual sexual

activity within marriage is considered rape. Insufficient knowledge about sexual rights, consent, and healthy relationships hampers the recognition and understanding of marital rape. To overcome this challenge, comprehensive education and awareness campaigns targeting individuals, communities, and educational institutions are needed to promote understanding, empowerment, and the acknowledgment of marital rape as a violation of rights.

5.2 Institutional barriers and inadequate support systems:

Institutional barriers and inadequate support systems pose challenges in addressing marital rape. Law enforcement agencies, healthcare providers, and judicial institutions often lack the necessary training and sensitivity to handle marital rape cases effectively. The lack of specialized support services, such as counseling, legal aid, and shelters, further limits survivors' access to justice and support. To address these challenges, institutions need to develop and strengthen mechanisms, provide training programs, and establish comprehensive support systems that prioritize the needs of survivors.

5.3 Cultural sensitivities:

Cultural sensitivities and resistance to change create obstacles in addressing marital rape. Deeply ingrained cultural norms, traditional gender roles, and societal expectations contribute to the acceptance or normalization of marital rape. Overcoming these cultural barriers requires a multifaceted approach involving community engagement, dialogue, and challenging harmful beliefs and attitudes. Sensitization efforts should involve religious and community leaders to promote gender equality, consent, and respect within marital relationships. Culturally sensitive approaches are crucial in driving social change and effectively addressing marital rape.

Overcoming these challenges requires collaboration among government agencies, civil society organizations, grassroots movements, and individuals committed to combating marital rape. It involves raising awareness, education, advocacy, and policy reforms to create a society that prioritizes the rights, safety, and well-being of individuals within marital relationships.

6. Conclusion:

The fact, Marital Rape exist is undeniable we see many cases and victim of marital rape who are still waiting for justice in form recognizing a punishable offence in law all over the India. Rape in any form whether marital or non-marital should be an offence and sever punishment must be given. Marital rape is a grave breach of women's autonomy and a violation of human rights. Its aggravated by a lack of knowledge and education about the problem, which is firmly ingrained in the patriarchal worldview that permeates Indian society. It will need extensive efforts at both the individual and community levels to address the societal attitudes and cultural

practises that support marital rape. It is possible to lessen the occurrence of marital rape and make sure that victims get the help and justice they deserve by adopting a thorough and multifaceted strategy. We should not ignore the severity for such punishable crime and its impact on victim and society. The Society should accept marital rape as Rape and the victim irrespective of gender should be treated with Respect in society. Its a high the Indian Society should accept the Same and IT'S TIME FOR A CHANGE, LETS ACCEPT THE REALITY THAT MARITAL RAPE IS A RAPE.

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