

## **BREAKING THE SILENCE ON MARITAL RAPE AND DEMANDING JUSTICE**

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#### **Abstract**

This research paper comprehensively analyzes marital rape, focusing on its legal and social implications. Non-consensual sexual actions carried out by one spouse against the other while still married are referred to as marital rape. The study addresses the social attitudes and perceptions surrounding marital rape, stresses the difficulties in addressing this issue, and looks at the historical background of marital rape laws. It also evaluates case studies and international legal systems to see how far we have come in defining and outlawing marital rape. The study intends to add to the continuing conversation about marital rape by highlighting the necessity of societal and legal change in order to end this form of abuse.

**Keywords:** Marital Rape, Marriage, Violence, Social Change.

#### **INTRODUCTION**

Marriage is frequently seen as a sacred institution that represents love, trust, and respect for one another. However, a painful reality—marital rape—remains underneath the surface of this treasured partnership. The act of forcing non-consensual sexual contact on another spouse is referred to as marital rape. Even though there has been great progress in combating gender-based violence, the problem of marital rape is still veiled in secrecy and societal myths. This essay tries to clarify this important issue, increase understanding of its significance, and promote societal and legal change.

#### **THE LEGAL PERSPECTIVE**

In the past, many legal systems around the globe either did not consider marital rape to be a crime or imposed light punishments. The detrimental idea that consent was assumed inside the boundaries of marriage was maintained by the idea of marital exemption. But in recent years, substantial legal changes have evolved that classify marital rape as a crime. The marital exception has been eliminated, and nations like Sweden, the United Kingdom, and Canada have passed legislation recognizing the importance of consent in marriage. These legal

advancements are essential advances in the direction of providing survivors of marital rape justice.

In India, the legal landscape surrounding marital rape is complex, and there have been several significant cases that have shaped the discourse on marital rape. However, it's important to note that as of my knowledge cut-off in September 2021, marital rape is not explicitly recognized as a criminal offense under Indian law. Nevertheless, some cases have highlighted the issue and sparked debates on the need for legal reform.

Analyzing various examples and past decisions regarding the severe harm caused by the husband and wife. The rule of marital rape does not apply between husband and wife after the age of fifteen years, according to the ruling in the case of *Queen Empress v. Haree Mythee*. In this instance, the husband violated section 338 of the Indian Penal Code, 1860 by rupturing his wife's vagina, causing an injury that resulted in her death.

A husband raping his wife is a crime, according to the ruling in the English criminal code case *R v. R.*, The rape conviction was maintained by the Court of Appeal and the House of Lords, who ruled that English law does not recognise a marital rape exemption. While they were away, R broke into the home of his wife's parents and forced her to have sex with him against her will. In accordance with Section 1(1) of The Sexual Offences Act of 1976, he was detained on a rape charge. In the case of *Emperor v. Shahu Mehrab*, the husband was found guilty under section 304A of the Indian Penal Code of killing his young wife by careless and reckless sexual conduct.

The Andhra Pradesh High Court ruled in *Saretha v. T. Venkata Subbaih* that there can be no question that an order for the restitution of conjugal rights that are enforced violates the inviolability of the subject's body and mind, violates the subject's integrity, and intrudes on their marital privacy and domestic intimacies.

The right to bodily privacy was referred to by the Supreme Court in the *State of Maharashtra v. Madhukar Narayan Mardikar*. Although this case does not pertain to marital rape specifically, it is often cited as a significant ruling in the context of marital rape in India. A prostitute is permitted to decline sexual activity, according to established law. All stranger rapes are considered crimes, and all women—aside from wives—are granted the right to privacy over their bodies, which includes the option to deny consent and sexual activity. The challenge is that matrimony has come to be revered as sacrosanct. Instead of having the wife worship her husband for all of his needs, especially sexual ones, there should be reciprocal respect and trust. Being raped by a friend or family member is a lot more painful than just seeing it, and cohabiting with the perpetrator makes it worse. This case highlighted the absence of legal recognition of marital rape in India and the need for reform in the country's laws.

In *Independent Thought v. Union of India* (2017), the Indian Penal Code's Section 375 provision that criminalizes rape but exempts sexual activity between a husband and his wife if she is older than 15 was contested. In its ruling, the Supreme Court of India ruled that any sexual activity with a wife under the age of 18 would be regarded as rape, regardless of the couple's marital status. Although this case did not specifically deal with marital rape in the

context of adult marriages, it did highlight the value of consent and the necessity of legislative change to safeguard women's rights.

## **EFFECTS OF MARITAL RAPE**

In the long run, marital rape harms the emotional and physical wellbeing of the female victim by causing physical, psychological, and mental health problems. This section is extensively divided into psychological and physical problems a woman could experience during or after rape.

### **PSYCHOLOGICAL EFFECTS**

In addition to sexual instability, inaccessibility, or dysfunction, women who have undergone marital rape also endure depression, PTSD, fear, low self-esteem, and rape trauma syndrome. As soon as a woman marries her husband, she is expected to fulfil his sexual desires. The concept that anything like this may be required without her agreement must be frightening to any female encountering this for the first time. She is aware that there is no use in resisting or defying her partner, even though any future occurrences must seem horrifying yet unimportant to her. The woman worries that her family's standing will suffer. As a result, she feels under pressure to provide for her family.

### **HEALTH ISSUES**

The majority of women who experience frequent rape also experience chronic pain. Black eyes, broken ribs, knife wounds, and physical scars from the assault are the end result of this. These are just a few examples of the difficulties that women may encounter. The majority of sufferers have talked about having discomfort and bleeding during menstruation. The bleeding is brought on by a severe vaginal rupture. Bleeding, agony, and rage are possible side effects for anal sex inmates.

They could feel nauseated if the abuse incident is somehow brought back to mind. An additional source of stress for the sufferer at this time may be an unwanted pregnancy. Anal-sex prisoners may experience bleeding, pain, and anger. They could feel nausea if the abuse episode is in any way brought to mind. Unwanted pregnancies are also possible at this time, which puts further mental and psychological strain on the victim. Particularly if the victim is an adolescent or young adult. This could result in preterm delivery and be harmful to the unborn child. Infertility caused by vaginal rupture may prohibit a person from ever having children. This might seriously impair the victim's future if they ever wish to start a family.

They may have scars that fade with time. This can encourage the victims to end their lives. Due to their perceptions of marital rape and their incapacity to seek help, the victim may think that suicide is their only option.

## **MARITAL RAPE IS A VIOLATION OF CONSTITUTIONAL RIGHTS**

It is terribly unfair and definitely in violation of the fundamental rights protected by Part III of the Indian Constitution to discriminate against women purely because of their marital status. The right to equality is one of the fundamental rights that serve as their foundation.

According to Article 14 of the Constitution, which forbids discrimination against anybody based on caste, class, creed, age, sex, religion, or place of birth, all citizens have equal protection under the law and equality before the law. An exception under Article 375 of the Indian Penal Code violates the right to equality. Citizen has the right to sue the government in court if they believe they have been the victim of discrimination because of their class, caste, or religion.

This Fundamental Right seeks to end all types of inequality, defend citizens from discrimination, and uphold social harmony. However, married women over the age of 15 are not able to disclose a sexual assault that their husband has committed against them legally, which violates their right to be free from age- and marital status-based discrimination.

The right to life is a fundamental right given to all people, regardless of their nationality, according to Article 21 of the Constitution. Married women over 15 who are the victims of marital rape suffer a major loss of life, personal liberty, and security.

The United Nations has often stated that violence against women, whether it takes place in public or private, affects or nullifies the exercise of their fundamental rights.

The Convention on the Elimination of All Forms of Discrimination (CEDAW) Committee has specifically mentioned gender violence as limiting or eradicating certain rights. These rights are protected by the fundamental human rights agreements that the majority of countries have ratified. The principal international treaties safeguarding human rights are the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), Convention against Torture (or "Torture Convention"), and CEDAW. Conventions on human rights require states to regulate the conduct of private actors. Similar to all other specific human rights offences, marital rape is not specifically included in the instruments.

As previously indicated, these rights have been interpreted by the CEDAW Committee and other treaty authorities to prohibit marital rape. States that ratify these treaties agree that the treaty bodies are empowered to oversee state compliance with them and to make broad recommendations and comments that form the core of the rights and categories of obligations. The reasoning next turns to the specific and most important human rights that marital rape breaches.

Although it is illegal, marital rape does happen in India. While in other countries either the court has played a big role in making marital rape an offence or the lawmakers have criminalized it, the Indian judiciary, on the other hand, appears to be working against itself.

In *Bodhisattwa Gautam v. Subhra Chakraborty* "The right to life, which is protected by Article 21 of the Constitution, was cited by the Supreme Court as evidence that rape is a crime against

fundamental human rights. However, ignoring marital rape, it undermines this same assertion. Because of the broad marriage rape exemption in Section 375 of the Indian Penal Code, 1860, women who encounter and need to report sexual assault from their spouses are currently denied state protection”.

## **CHALLENGING SOCIAL ATTITUDES**

The prevalent societal views that minimise or ignore the presence of marital rape are one of the main barriers to its prevention. Victim-blaming and stigmatisation are influenced by entrenched gender stereotypes, patriarchal attitudes, and erroneous notions of marital rights. The common belief that marriage entails unquestioning consent undermines people's ability to exercise agency and maintain their physical autonomy in these relationships. To combat these damaging social attitudes and promote a culture of consent and respect, education, awareness initiatives, and open dialogue are essential.

Repercussions for Survivors: Survivors of marital rape may experience significant physical, psychological, and emotional effects. It undercuts their feeling of safety, trust, and worth and frequently results in long-term distress. Survivors encounter special difficulties when pursuing justice, including societal pressure, worry about reprisals and a lack of adequate support networks. In order to help survivors on their path to recovery and healing, it is essential to offer extensive support services such as safe shelters, therapy, and helplines.

## **MOVING FORWARD**

Advocacy and preventative: Combating the problem of marital rape necessitates a multifaceted strategy that includes legislative change, neighbourhood involvement, and preventative programmes. In order to reform the law, activists, groups, and survivors are pleading with legislators to recognise and treat marital rape as a crime everywhere. To increase public awareness, confront damaging stereotypes, and create supportive environments, governments, civic society, and the media must work together. Furthermore, thorough sex education, workshops on consent, and relationship counselling can equip people with the information and abilities to support healthy relationships and discourage sexual assault.

## **CONCLUSION**

Marital rape is a serious breach of human rights since it robs victims of their freedom, dignity, and well-being. To solve this problem, society, governments, and institutions must work together. We may work towards a future in which every person, regardless of marital status, is free from the horrors of sexual violence by speaking out against the silence, questioning traditional standards, and fighting for legal and social reform. Together, we can build a society that values equality, respect, and consent both inside and beyond the institution of marriage.

Marital rape is a reality in our society, and many victims endure their suffering in silence because there are no legal protections for this horrible crime and a severe lack of public support. To help the victims receive justice, Section 375 needs to be changed in order to remove the

exception and make marital rape a crime.

The belief and idea that a woman is the husband's property is fatal to the status of women in India. Due to a lack of the necessary legal protections, they are powerless to do anything and are forced to endure suffering in silence. Considering how Indian society is burdened with discriminatory social norms and customs, the major change needed is in th

Apart from judicial initiation, raising awareness is what we need most. According to the UN, "protecting women's human rights through legal means is just as vital as educating boys and men to consider women as valuable participants in life, in the development of society, and in the accomplishment of peace."

Matrimonial law's primary objectives include marriage maintenance and the development of institutional trust, however, these objectives cannot be achieved at the expense of women's fundamental and human rights. Women must be allowed to make their own decisions and protect their bodily integrity. Therefore, the law completely fails to protect its inhabitants when it refuses to provide justice and protection for sustaining the purity of marriages. The law shouldn't support forced relationships or defend a rapist's husband.

As a result, it is clear that the solution does not consist in delaying the urgently required amendment out of fear that society will abuse it, but rather in ensuring that the law is applied more forcefully. Because its implementation is the biggest problem in our society, it must be done in order to protect victims of abuse in marriage and not only to be used as a tool for harassment. To distinguish between serious cases and baseless ones, the police must undertake a thorough and appropriate investigation.

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