



## MARITAL RAPE: ASSAULT ON WOMEN'S DIGNITY

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### Abstract:

A marriage, generally, is a bond of trust and affection. Dependency of women on men, the relationship entails coercive potential. Marital rape is undesirable intercourse by a husband with his wife by force, physical violence or without her consent. Marital rape is a non-consensual act of violence unconventional by a husband against the wife where she is physically, emotionally and sexually abused. It questions the very essence of human relationship, wife is continuously raped by whom she believes the man who is her husband loves her. Marital rape is threatens the basic roots of a relationship where a woman may end up feeling humiliated and deceived. In this article I have discussed about the history of marital rape and its various kinds and legal position of marital rape in India.

**Key Words:** Marital Rape, Undesirable Intercourse, Violence Unconventional & Abused.

### Introduction:

'Relation of marriage based on trust, faith and affection'

Wife shares her home, her children, her all secrets, her fears and her life with her husband. Marital rape, therefore, involves a disloyalty of her trust. It questions the very essence of human relationship. In this situation, a man can no longer be trusted as a shield of protection and a woman cannot turn to his husband to seek comfort or gain faith. Any act that threatens to an individual is termed as abuse, while violence is not only physical abuse, but it is also emotional, mental, economic, verbal, and sexual abuse too. The social stigma of public dishonour is the main cause for a woman to become restrained in the atrocious act like marital rape and other important causes of silence are lack of education and economic dependence on her husband. In middle of the 20<sup>th</sup> century the issues of sexual and domestic violence within marriage violence against married women, have come to attract international attention including marital rape too. Marital rape is prevalent from ages as a social problem though silence has been maintained on this problem. The analysis reveals that marital rape and sexual violation is not merely related to occasional forced or penetrative sex, rather it is an important issue.

### History of Marital Rape:

Historically, the word 'rape' has been primarily derived from the Latin term *raptus* which literally refers to the act by one man of damaging or destroying the property of another man.<sup>[1]</sup> It was also known as violent theft on person and property. Theft word was here used as synonymous with abduction and a woman's abduction or Sexual molestation was just the theft of a woman without the consent of her. The word property primarily referred to the wife, as the marital rape name suggests is rape caused to wife by her husband. It seems to the actual use or threat and force used by the husband against the wife to compel her into sexual intercourse with him. This kind of rape also known as conjugal rape or wife's rape. As decided in the case "In the past the law of rape was concerned with theft of virginity and was there primarily to protect property rights Redress lay in financial compensation. According to Bracton<sup>[2]</sup> even in the thirteenth century when penal sanctions for rape, imposed by the King's Court were supposed to have supplanted pecuniary compensation, in practice, financial compensation continued to be paid. Even today the purpose does not seem unequivocally to be the female's right to her bodily integrity.

The fact that marital rape is protected, whatever be the considerations, is a pointer towards that. "The fact that marital rape is not recognized because it is assumed that a man cannot harm himself. This principle is also coined by Blackstone as 'Unities Doctrine'<sup>[3]</sup> where a man and a woman once marry their identities get merged and they become one person in the eye of law. These norms deny looking at marital rape as a serious crime against a woman's body or integrity and treat it as an ethical and less serious issue linked to family honour and injury to a man's property. Lord Mathew Hale, Chief Justice of England in 1600s wrote in 'History of the Pleas of the Crown' "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife has given up herself this kind unto her husband which she cannot retract." Lord Hale asserted that upon marriage a wife consents and automatically hands over her person to the husband for sexual acts and the consent is irrevocable, which cannot be retracted subsequently<sup>[4]</sup>

### Marital Rape:

The foundation of marital rape back to those ages of the history of human being, when women were considered to the property of their husband. This was also covered by a legal principle of *coverture* which refers to the wife being covered by the spouse once married, such that she is now his property.<sup>[5]</sup> It denies a woman her

bodily integrity thus striking a blow at women's rights.<sup>[6]</sup> The issue of marital rape is largely neglected. Patriarchal domination of the society has come up time and again and has granted to the husbands exemption in cases of marital rape basing on the assumption that the wife has given herself to the husband through the contract of marriage.<sup>[7]</sup> This is not just a physical or sexual violation but a deceit of faith or trust. It also said to have taken place when the wife is compelled to have entered into sexual intercourse in a situation when she is unable to express consent.<sup>[8]</sup> Once married, a man is bound by the duties of marriage to respect his wife and treat her with dignity.<sup>[9]</sup> The concept of matrimonial rape has evolved in the recent period. However, neither in the past nor in the present have such laws been formed which prosecute a married man for forcing her wife to have sex with him. Common law down not provide any remedy for such a torture being caused to the woman, and says that a woman is obligated by the ties of the marriage and thus has to provide her husband with everything that he asks for. Over the years however, with the growing awareness of gender equality has been amended thereby criminalizing such activities. In the present scenario, the developed and the developing nations have taken a step forward in protecting woman against such crimes.

#### **Theories of Marital Rape:**

Various authors have different theories regarding the occurrence of marital rape in the society:

**Power Play Theory:** This theory considers marital rape as a tool in the hands of the patriarchal society that is used to exercise control over women. They consider that the exemption given in cases of marital rape is a remnant of the earlier laws regarding women that considered them to be the property of the husband.<sup>[10]</sup> The feminists are of the view that marital rape is nothing but a result of a power play by the male spouse in the marriage.<sup>[11]</sup> Radical feminists have gone to the extent of arguing that any form of heterosexual intercourse is based mainly on the desire of the man and is another form of oppression on women.<sup>[12]</sup>

**The Social Constructionism Theory:** The believers in the theory of social constructionism are of the view that men have dominated the society in law making and the political arena since ancient days.<sup>[13]</sup> Laws thus came as a reflection of the interest of men. Such laws considered women to be their husband's property after marriage and hence, marital rape was considered an offence of lesser degree as compared with rape.<sup>[14]</sup> Some jurisdictions even considered that rape in a marriage is not rape at all.<sup>[15]</sup> The social constructionists believe that marital rape is a means through which men try to assert themselves over their wives so as to retain their long gained power over their property.<sup>[16]</sup>

**Sex-Role Socialization Theory:** *Sex-Role Socialization Theory:* these theorists believe that it is the particular gender roles which guide the sexual interactions between the spouses in a marriage. In a marriage, women are always taught to be calm and passive, submissive whereas, men are trained to be dominant and aggressive.<sup>[17]</sup> Care and love are attributed to women. Men, on the other hand, are the major perpetrators of sexual entertainment with violent themes.<sup>[18]</sup> Sex role socialists are of the view that marital rape is nothing but an expression of the traditional perceptions of sex role.<sup>[19]</sup>

**Social Coercion by Non-Physical Means:** This form of coercion involves social coercion in which the wife is compelled to enter into sexual intercourse by reminding her of her duties as a wife. This form of coercion entails applying non-physical techniques and tactics like verbal pressure in order to get into sexual contact with a non-consenting female.<sup>[20]</sup> The most commonly used non-physical techniques include making false promises, threatening to end the marital relationship, lies, not conforming to the victim's protests to stop, etc.<sup>[21]</sup> Such acts of sexual coercion by the use of non-physical stunts though considered less severe in degree as compared with physically coercive sexual acts are widespread and pose a threat to women's rights. It is difficult defining clear cut lines between different types of rape as it can be of any of the above combination of them. A rapist may use duress tactics and ample force to control his wife initially, but then use increased violence if the victim combats. It is a form of rape that lays hidden under the cover of marital privacy that gives both the husband and the wife, the right to protect the private acts that they both enter with consent: it is not a guard to hide violent acts.<sup>[22]</sup>

#### **Types of Marital Rape:**

Spouse Rape is mainly divided into 3 sub categories:

- ✓ Violent Rape
- ✓ Force Rape
- ✓ Merciless Rape

**Violent Rape:** Violent Rape occurs when physical and sexual violence occurs together. The husband uses full physical violence to cause harm to his wife, apart from any injuries due to rape itself i.e injuries to the genital areas or breasts. Like, husband punches his wife. *Either rape becomes a part of a violent assault or the violence becomes a part of rape.* A husband forces their wives to submit to sexual acts after physical aggression to prove her clemency or to intimidate and humiliate her and if the wife refuses, she is threatened of more violence.

**Forced Rape:** -This kind of Rape includes only ample force used on the part of the husband to control or hold his spouse in position. Like, holding down the victim by her arms or wrists to stop her defending herself or escaping. This type of Rape is usual in abusive relationships where physical violence does not exists or where there is a larger unlikeness between the physical size and strength of husband and wife. Intimidation plays a

great role in most cases of such “force only” rape. The victim may also be so confused and numbered by consistent emotional crime that actually does not know how to act or react when sex is forced on her.

**Merciless Rape:** This type of rape tends to indicate that in addition to the rape itself, the wife is forced to quit or undergo more humiliation. Like, husband urinating on the wife, acting out of a fantasy of torturer or using other object during a rape. This type of rape may or may not involve further violence.

#### **Indian Position:**

In India, the sacramental nature of marriage as a lifelong bond eliminates and overlooks the notion of consent. A wife is treated as a sex slave and more importantly this form of slavery is officially and legally sanctioned and legitimized with no escape routes made available to the woman. It also endorses a man's right over his wife despite of the fact that she may find sex as an unwelcome, frightening, painful or violent encounter. This assertion of conjugality is based on the concept of diminished responsibility which assumes a woman as sexual being with no autonomy to consent to sexual acts. Women are considered as keeper of honour of their families, tribes and communities. Rape is therefore considered synonymous with abduction and treated as an attack on community and the theft of a man's property. And even today, this norm continues to command the common notions and practices. Women are still treated as the property of men within social and legal discourses. The fact that marital rape is not recognized marital rape only as penetrative sex limits the definition of sexual violence within marriage.<sup>[23]</sup> Women being raped every night over prolonged period even during child birth and pregnancies. Wives are thrashed violently because they refuse to sex. Contrary to popular belief, marital rape is much more hurtful and has long lasting emotional impact where violence may not occur as frequently. Raped within marriage is presumed that to involved in intercourse with husband is her ‘duty’ to keep her family. Victims of marital rape sustains injuries and. this can be extremely disturbing. Physically and psychologically panic-stricken<sup>[23]</sup>

Indian culture of ‘silence’, ‘tolerance’, ‘adjustment’, ‘compromise’ among women is propagated to ‘save and respect the ‘honour’, the ‘pride’ and the ‘values’ of their family.<sup>[24]</sup> In Indian society women continues to be oppressed and ill treated. The members of the family ignore the truth that in most cases of emotional violence, sexual abuse, physical assault, mental suffering, all this takes place with her because they are weak, vulnerable, obedient and subservient. Concept of Marital rape should recognise from the gender perspective as a crime, and analyse it in the larger perspective of violence against women. Criminalizing marital rape has been a long standing demand made by the women's movement in India. Recommendations of penalizing rape within marriages were also made by the Justice Verma Committee Report formulated after Nirbhaya's gang rape case. This Report reiterates that marital rape stems from the outdated notion of marriage that regards wives as property of husbands. It rules out the common law of coverture, according to which a wife has been deemed to be consented at the time of marriage to have intercourse with her husband at his whims and this consent could not be revoked anytime after the marriage. The Committee suggested that existence of relationship is not a valid defence against the sexual violation. However, this recommendation was ignored and rejected by the then government which selectively and arbitrarily picked up a few suggestions rather than adopting the same to tackle rape cases. This piecemeal adoption of the multi-sect oral approach denies comprehensive recourse to the survivors of sexual violence governments do not want to touch the institution of marriage. Based on the irrational logic that criminalizing marital rape ‘will destroy the institution of family, will attack its sanctity’ and ‘will be used as a weapon by women to torture the male members’, Government is ignoring the fundamental right of women's dignity.

**In Indian Penal Code:** Before The Criminal Law Amendment Act 2013 The provision of rape in Section 375 of Indian Penal Code (IPC), has mentioned as its exception clause- “Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape.” This section in dealing with sexual assault, in a very narrow apprehension lays down that, an offence of rape within marital bonds stands only if the wife is less than 15 years of age. If she is under 15 years, an offence is committed, however, less serious, having bland punishment. Once, the age crosses 15, there is no legal protection conferred to the wife, in direct infringement of human rights regulations. How can the same law provide for the legal age of consent for marriage to be 18 while protecting women from rap, only those up to the age of 15? Beyond the age of 15, there is no remedy the woman has and rape within marital bonds stands only if the wife is less than 15 years. This is the controversial and discriminatory statement of section 375 of I PC. The Criminal Law Amendment Act 2013 does not recognize marital rape as a crime unless a wife below 16 years of age is sexually assaulted or rape is committed during the period of separation between the spouses. The state took the stand that the Protection of Women against Domestic Violence 2005 already provide remedy besides the provisions under criminal law and existent criminal law provision under the Section 498 A of the Indian Penal Code which penalize cruelty to married women.

This approach fails to see the fact that none of the personal laws, the criminal or the civil law empowers a wife to seek criminal remedy against husband who sexually assaults her repeatedly over a prolonged period. The marriage is a sacrosanct institution. He argued that ‘the concept of marital rape, as understood internationally, is not suitable in the Indian context, due to illiteracy, poverty, social customs and

values, religious beliefs and the fact that Indian society treats marriage as a sacrament'.<sup>[22A]</sup> Women to be docile, submissive, 'tolerant', 'adjusting' and passive and assume that wives have no right to complain against their abusive husbands. In case, they do so, they are demonized and are not considered as 'good wives'. Besides it also overlooks fundamental principle of women's bodily integrity. This rationality fails to address the structural inequalities inherent in the system and indoctrinate the acceptability of sexual violence against women as 'normal'.

**In Indian Penal Code:** The provision of rape in Section 375 of Indian Penal Code (IPC), has mentioned as its exception clause- "Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape. "Now after the Criminal Law Amendment Act 2013 considers the forced sex in marriages as a crime only when the wife is below age 16. This section in dealing with sexual assault, in a very narrow apprehension lays down that, an offence of rape within marital bonds stands only if the wife is less than 16 years of age. If she is under 16 years, an offence is committed, however, less serious, having bland punishment. Once, the age crosses 16, there is no legal protection conferred to the wife, in direct infringement of human rights regulations. How can the same law provide for the legal age of consent for marriage to be 18 while protecting women from rape, only those up to the age of 18? Beyond the age of 18 there is no remedy the woman has and rape within marital bonds stands only if the wife is less than 16 years. This is the controversial and discriminatory statement of section 375 of IPC.

A marriage is a bond of trust, faith and affection. A husband exercising sexual superiority, by getting it on demand and through any means possible, is not a part of the Marriage. The very definition of rape in section 375 of IPC demands change. The narrow definition has been criticized by Indian and international women's and children organizations, who insist that including oral sex, sodomy and penetration by foreign objects within the meaning of rape would not have been conflicting with denied constitutional provisions, natural justice or equity.

Even international law now says that rape may be accepted as the "sexual penetration, not just penal penetration, but also threatening, forceful, coercive use of force against the victim, or the penetration by any object, however slight." Article 2 of the Declaration of the Elimination of Violence against Women includes marital rape explicitly in the definition of violence against women. Emphasis on these provisions is not meant to baffle, but to give the victim and not the criminal, the benefit of doubt.

The issue of marital rape is largely neglected. Patriarchal domination of the society has come up time and again and has granted to the husbands exemption in cases of marital rape basing on the assumption that the wife has given herself to the husband through the contract of marriage.<sup>[25]</sup> Over the years however, with the growing awareness of gender equality the common law as well has been amended thereby criminalizing such activities. In the present scenario, the developed and the developing nations have taken a step forward in protecting woman against such crimes

Modern leaders in support of the victims of marital rape, however, hold that marital rape is also a form of rape and the marital status of the woman should have no bearing on the culpability in the crime of rape.<sup>[26]</sup> It is a form of rape that lays hidden under the cover of marital privacy that gives both the husband and the wife, the right to protect the private acts that they both enter with consent: it is not a guard to hide violent acts.<sup>[27]</sup> Women have long suffered from high levels of sexual violence in the country, including at home, but the government is yet to make marital rape a crime.

Minister for women and child welfare Maneka Gandhi recently told Parliament that a lack of education along with poverty, religious beliefs and societal norms, among other reasons, make such a law out of the question. The comments had sparked outrage among women's groups, and baffled many since the outspoken minister had earlier indicated her support for the issue. As the torrent of criticism grew, Mrs Gandhi reversed her position, saying this was now under consideration.

"This is one of the most complicated places to intervene because you are intervening in the bedroom," she explained to reporters "How to do it with grace and with firmness is something we need to negotiate."<sup>[28]</sup> Now after the Criminal Law Amendment Act 2013 considers the forced sex in marriages as a crime only when the wife is below age 16. Thus, marital rape is not a criminal offense under the IPC. Marital rape victims have to take recourse to the Protection of Women from Domestic Violence Act 2005 (PWDVA). The Act which came into force in 2006, outlaws marital rape. However, it gives only a civil remedy for the offence.

The victims and activists say criminalising marital rape would act as a powerful deterrent and go a long way towards protecting women in their own homes. Women have long suffered from high levels of sexual violence in the country, including at home, but the government is yet to make marital rape as a crime. A former chief justice, appointed at the time to investigate the laws, recommended placing marital rape under the boundary of the law but his suggestion was disregarded. A parliamentary panel looking into the issue in 2013 also rejected the idea, saying it would place the "Indian family system" under "great stress". Although marital rape is illegal in 176 countries including Nepal, but not in India. In 2006, the UN Secretary-General's in-depth study on all forms of violence against women stated that (page 113)<sup>[29]</sup>. "Marital rape may be prosecuted in at

least 104 States. Of these, 32 have made marital rape a specific criminal offence, while the remaining 74 do not exempt marital rape from general rape provisions. Marital rape is not a prosecutable offence in at least 53 States. Four States criminalize marital rape only when the spouses are judicially separated. Four States are considering legislation that would allow marital rape to be prosecuted.”

The marital rape exemption or defense became more widely viewed as inconsistent with the developing concepts of human rights and equality. Feminists worked systematically since the 1960s to overturn the marital rape exemption and criminalize marital rape.<sup>[30]</sup> Increasing criminalization of spousal rape is part of a worldwide reclassification of sexual crimes “from offenses against morality, the family, good customs, honor, or chastity ... to offenses against liberty, self-determination, or physical integrity.”<sup>[30]</sup> In December 1993, the United Nations High Commissioner for Human Rights published the *Declaration on the Elimination of Violence Against Women*. This establishes marital rape as a human rights violation.

The importance of the right to self sexual determination of women is increasingly being recognized as crucial to women's rights. In 2012, High Commissioner for Human Rights Navi Pillay stated that:<sup>[31]</sup>

“Violations of women's human rights are often linked to their sexuality and reproductive role. (...) In many countries, married women may not refuse to have sexual relations with their husbands, and often have no say in whether they use contraception. (...) Ensuring that women have full autonomy over their bodies is the first crucial step towards achieving substantive equality between women and men. Personal issues—such as when, how and with whom they choose to have sex, and when, how and with whom they choose to have children—are at the heart of living a life in dignity.” It is a general misinterpretation that marital rape does not hurt wife at all, but it is one of the most serious violence due to that wife likely to suffer severe long-term physical and emotional consequences. Marital rape threatens Dignity and human rights of wife.

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