

## MARITAL RAPE IN INDIA – NEED FOR CRIMINALIZATION

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### Abstract:

In our country, on one side female idols are worshiped as gods and on the other side women are harassed, brutally raped and sometimes killed. Few get punished but many get escaped from prosecution as there is some loophole in the law. Marital Rape is one such loophole in law, which leaves the husbands free from any prosecution or punishment for abusing the sexual autonomy of women. Women's consent is not given importance. Once married, husbands take their wives for granted and exercise their dominance physically as well as mentally on them as there is a perception that marriage itself presumes consent. Married women though express their sufferings to their parents or to their in-laws; the only reply they get in return is to 'adjust' as it would bring shame upon the family, and when informed to police, they get to know that such marital rapes are not considered an offence and prosecution is not possible. Marital Rape though considered offence in most of the countries, still has no legislation in India. The aim of this paper is to analyze the difficulties in bringing an amendment regarding marital rape and how those difficulties can be resolved. Without framing legislation for marital rape, there would be no justice for victims as any provision under other laws is just inadequate to provide them appropriate remedy and justice. Hence our Government should pass a law criminalizing marital rape

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### **Introduction**

There is a general proverb in our country that “Marriages are made in heaven” and celebrated on Earth. A marriage is considered as a bond of trust and true affection. Once married, women are considered as a property of her husband and marriage becomes a license for husband to have sexual superiority over her even without her consent. This rape within the bonds of marriage by husband is known as marital rape. Thus, marital rape is the sexual intercourse by husband with his wife obtained by force, threat of force, physical violence or when she is unable to give her consent.

Though marital rape affects the fundamental right of women, it is not yet made an offence in India. Despite many amendments, reports of law commissions and new legislations for protection of women, marital rape is not considered an offence in India. Section 375 which deal with rape mentions nothing about rape done within marital relationship.

But there is an exception clause stating that if a man undergoes a sexual intercourse with his wife who is not less than 15 years is not rape. The provision clearly depicts that the position of women above 15 years who is subject to forced sex within her marital relationship is a question mark. Without framing legislation for marital rape, there would be no justice for victims as any provision under other laws is just inadequate to provide them appropriate remedy and justice. Hence, our Government should pass a law criminalizing marital rape taking into the merits of bringing and implementing such a law rather than not supporting such a law due to some silly and archaic reasons.

### **Review of Literature**

Dr. Bhavish Gupta, Marital Rape: Current legal framework in India and the need for change, *Galgotias Journal of Legal Studies*, 2013. In this article the author feels that the idea of women has to have sex with her husband irrespective of her will, consent, health is absolutely not acceptable in a civilized society. The author emphasizes that there is no justification in exemption of marital rape in current times. The author states that criminalization of marital rape

should be made as it is an important step to be made towards changing women's experience of sexual violence in a marriage.

Rashed Ahmed, Critical Analysis on marital Rape and its legal consequences, IOSR *Journal of Humanities and Social Science*, 2016. In this article the author feels that the marital rape is a non-consensual sex in which perpetrator is the victims's spouse. Once widely ignored but now it is non repudiated by International conventions and increasingly criminalized. The author has focused on the prevalence of the problem in the society. The author has work on to identify the motivations and other factors of why men rape their own wives.

### **Objective of the Study**

- To understand about what does marital rape mean and its similarity with rape.
- To analyze whether human rights of women are violated and loopholes in law.
- To study about the laws in other countries where marital rape is penalized.
- To provide suggestions for criminalization of marital rape in India.

### **MARITAL RAPE TO BE GIVEN IMPORTANCE AS RAPE**

The main reason for occurrence of such marital rapes is the idea of patriarchy fixed deeply in the minds of men. Once married, they take their wives for granted and exercise their dominance physically as well as mentally on them.

Married women though express their sufferings to her parents or to her in-laws; the only reply she gets in return is to 'adjust' as it would bring shame upon the family, and when informed to police, she gets to know that such marital rapes are not considered an offence and prosecution is not possible. 'Beti Bachao Beti Pado' scheme has been initiated by the present government to save the girl child and provide education. But it just means to educate our girls before marriage and yet leave them powerless to save themselves from being raped after marriage. There is a fear that if there is a legislation framed for marital rape, it will be abused by women must like anti dowry and domestic violence laws. But presence of false cases does not mean all cases logged are false, the victims are still craving for justice ([Pioneer](#) ).

## MARITAL RAPE- REAL LIFE ISSUES

There was an incident where a victim of marital rape approached the Chennai based activist and lawyer Sudha Ramalingam. She left her matrimonial home and stayed with her mother, but there was no judicial separation. After few days, her husband approached her house, entered her room and forced himself on her. Her husband was not stopped by her parents because they were married and this might lead them to get back together([Justice, misuse and proof: Why the le...](#)).

Another shocking case of marital rape is that a complaint was filed by a 21 year old victim, where she was forced by her husband to have sex with him and his friend. The husband has drugged and raped her. Even though mother in law knew about this, she didn't take any action but asked the daughter in law to cooperate with her husband. Hence a case of rape and unnatural sex was filed against them([Lack of a law against marital rape is...](#)).

In case, marital rape is involved in some physical assault cases, due to the absence of any separate or specific law, women don't approach anyone to file complaints on it and don't come forward to even talk about it. Many cases go unreported as women due to social stigma fail to file complaints of marital rape. Another reason for woman not to report marital rape is that they consider it normal for men to force themselves on women within marriage. In a patriarchal society marital rape is not considered as crime. It is true that some men treat wives as their property, and they do not consider forcefully sexual intercourse with wife to be rape.

Few years back, the newspapers carried story of a 26 year old woman who returned from a Bangkok honeymoon with serious injuries after her husband forced violent sex on her([Roy](#) ). Two separate pleas were submitted to the Supreme Court in 2015, first by an advocate through Public Interest Litigation and second by his colleagues asking for the amendment of the law by deleting the exception for marital rape. In the first plea, the petitioner, 28 years old, had filed charges of cruelty and domestic violence against her husband.

The plea stated that the law as it stands today amounts to a state sanctioned license granted to the husband to violate the sexual autonomy of his lawfully wedded wife([Rape Is A Crime In India — But There ...](#)). She stated that her husband without asking for consent would force sex with her and sometimes would insert artificial objects into her which made her unable

to walk. When she tried to leave her husband, he hit her with a box on her head 18 times and even inserted torchlight into her vagina.

She was continuously bleeding and called her mother for help in a semiconscious state. It took two months for the bleeding to stop. She tried to talk about this to her in-laws and her parents but the only thing that came as reply was that “Try to Adjust”. Kamlesh Kumar Mishra, an advocate and a legal consultant at the Human Rights Law Network filed the first Public Interest Litigation in Supreme Court representing the victim. But to the dismay, the Court held that since the petition is by an individual, the Court doesn't like to intervene and hence the petition was withdrawn.

But a second petition was filed by the advocate's colleagues, representing several women's rights organizations. This time, the Court gave a justification that in a Country like India, this cannot be applied. The Court considered marital rape to be a western concept and cited the 172<sup>nd</sup> Report of Law Commission of India on Review of Rape Laws of 2000, which stated that the exception given to husbands should not be removed since “that many amount to excessive interference with marital relationship” and that “marriage presumes consent.”

Another marital rape issue is that a woman in Mumbai at the age of 42 years has spent 24 years of life in hell where she was slapped; hit with stick, sexually abused and in public was verbally abused and treated like a slave. In 2015, in an emergency situation she approached the public hospital where she was told that the injuries on her private parts are the reason for her emergency condition and these injuries are the result of sexual assault. When she approached the police station to file a case against her husband, the assault was considered to be ‘a matter between the husband and wife’ and hence no case was registered([Srivastava](#) ).

The women in our country already suffer from various issues and is in bad condition. The idea of feminism not only saves women from male domination but places them in an equal footing thereby helping them to reach their goals. This aim would not be a full victory if sexual violence of women after marriage is considered as the right of man over her body as she consented to marry him. India not only has a domestic obligation but also an international obligation to protect women for marital rape.

The United Nations Committee on Elimination of Discrimination against Women wants India to criminalize marital rape. UNDP Chief Helen Clark while attending the IMF ‘Advancing

Asia' Conference spoke about marital rape that an assault which is happening at home against women is a crime and such a crime has to be recognized and should be properly dealt([Haidar](#) ).

When the issue of legalizing marital rape is raised in Parliament, Maneka Gandhi Minister for Women and Child Development has given a written reply that Factors such as level of education/ illiteracy, myriad social customs and values, poverty, religious beliefs, mindset of the society to treat marriage as a sacrament are the reasons why marital rape, an international concept cannot be applied in Indian Context([Will the Indian Government Finally Cr...](#)). Even many parliamentarians stated some more reasons such as the misuse of law if amended to prevent from legislating on marital rape.

### **Verma Committee Report**

In 2013, an attempt was made by the Verma Committee in its report. A three member panel was appointed to suggest amendments to India's sexual assault laws, to criminalize 'Marital Rape'. But this suggestion was put down stating that if marital rape is legislated to be a crime then this would destroy the whole belief of the concept of family harmony([Mukherjee](#) ). Marital Rape is considered an offence in about 52 Countries, but India still lags behind([Bhattacharya](#) ). If these countries can manage to criminalize the offence of marital rape despite its difficulties, why can't India criminalize it?

### **Marital Rape and Human Rights Issue**

Marital rape leaves women not only in bodily pain but also create a mental agony, destroying her health and inner peace. This is considered a violation of women's right to health according to the Universal Declaration of Human Rights regulations. It is generally said that rape committed by husband has less deleterious effect compared to rape committed by a stranger. But this is a myth as a rape by our partner creates a mental depression which stimulates hatred rather than love toward them. Marital rape affects the dignity of the married woman by treating her as an object to satisfy the lust of the husband thereby crushing the bonds of love and trust. And there is also a violation of Right to Equality as law distinguishes rape outside marriage and rape within marriage as different and by not framing any provision for penalizing marital rape. Right

to Equality though considered a fundamental constitutional right, in reality does not give any protection to such married women. It creates impressions that if women are not safe in their homes how will their safety be ensured outside their homes([Randall and Venkatesh 2015](#)).

## **PROBLEMS IN BRINGING MARITAL RAPE LEGISLATION IN INDIA**

### ***1. Why separate legislation needed when Domestic Violence Act includes sexual abuse and women can raise cruelty provision***

Domestic Violence Act is a civil law, and only provides for protection and monetary compensation to the victim. The Act does not speak about criminal violence and therefore does not provide proper justice to the victim of rape. Cruelty is another provision for women but even it does not provide about marital rape. In 2016, in Kerala about 3454 cruelty cases against women were reported in which the offenders were either husband or relatives([Amid spiralling rape cases, marital r...](#)). Hence when a woman knocks the door of the Court on the ground that she has been raped by her husband, the court may grant her civil remedies or moreover divorce on ground of cruelty but no specific punishment are mentioned for perpetrators of such a crime.

### ***2. Chances of False cases of marital rape***

Few claim that if a law on marital rape is brought, there are chances of large number of false cases. False cases are reported for many other crimes but that does not mean there are no crimes happening in our country. So, if a separate law is brought for marital rape, false cases will lodge but through proper investigation and better implementation, these cases can be minimized and the victim's grievance can be addressed.

### ***3. Proof of forced sexual intercourse***

Proving a forced sexual intercourse may be difficult but a crime cannot be left unseen due to difficulty in proving it. Even in many cases of rape, it's difficult to prove it. Circumstantial evidence plays a major role while proving rape when there is no other proper evidence available. Medical evidence can also play a role in proving the guilt of the accused. Though medical evidence cannot be accurate in finding if the sex is forced, certain other circumstantial evidences can depict the happening of crime. A history of physical violence, medical examination of the victim, testimony of witness and possible admission of the husband in electronic communications could be an ample evidence to prove the guilt. If there is a legal provision for

marital rape, at least when there is enough proof for proving forced sex, the law will help to punish the husband.

### **RECOMMENDATIONS**

1. A new legislation criminalizing marital rape and awarding appropriate punishments should be passed in order to protect married women who are victims of such a crime.
2. People should be made aware of the patriarchal mentality.
3. The Government should ensure that married women who are victims of marital rape are given medical and psychological support.
4. In order to avoid false cases of marital rape, proper training should be given to police officers and standard operating procedures for conducting investigations should be applied.
5. Women must be taught self defenses before completing education in schools or colleges in order to make them strong and prepared to tackle any physical violence which is done against her.

### **CONCLUSION**

There is a legal mechanism for women to approach Police Stations or Courts in cases of rape and other crimes if legislated but victims of marital rape cannot resort to any of such means. Married women are suppressed by their own families and even if they go beyond all these obstacles and approached Police station, their case does not get registered. Such an ironical situation of married women is prevailing in our Country. This problem faced by married women can be fixed only by legislating on marital rape and criminalizing it. Without framing legislation for marital rape, there would be no justice for victims as any provision under other laws is just inadequate to provide them appropriate remedy and justice. Hence, our Government should pass a law criminalizing marital rape taking into the merits of bringing and implementing such a law rather than not supporting such a law due to some silly and archaic reasons.



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