



MARITAL RAPE LEGISLATION – AN EMERGING NEED, INDIAN PROSPECTIVE

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Abstract

Sexual ferocity is defined as the action of divulging somebody to a sensual conduct without one's accord. It comprises of a large range of behaviours from touching to raping. The mainstream of the sufferers are women. Rape is the act of having erotic intercourse with an individual without consent. The notion of marital rape has been unnoticed for years because of the philosophy that endorses men have the right to treat their spouses as they desire and the wife must provide her man with all his requirements. These days with the variations and progress in the notion of marriage, the upsurge in the consciousness of the society and the understanding of the idea of violence against women; it has been understood that sensual intercourse should be equally desired by both parties of the married couple. Or else it should be well-thought-out as sexual assault.

The aim of the research paper is to review the medical, social and legal aspects of marital rape, to present the existing situation about marital rape in India, also to discuss how it could be barred.

Key Word: Marital Rape, Legislation, Remedies etc.

“Say no to Legitimate Rape”

1. OVERVIEW:

In the “modern-orthodox” Indian society it is a strong belief that the marital rape could not exist because a husband could not steal his own property or commit a crime against himself. Both sexes are subjected to sex-role socialization, however, gender-role behaviours are thought to be different for men and women. Men are taught to be dominant, powerful, and sexually aggressive, while women are taught to be passive, submissive, and the sexual gate-keepers. Feminist theory¹, social constructionism², and sex-role socialization³ are the three leading theories that have been used to explain existence and persistence of marital rape.

¹ Feminist scholars believe that marital rape exists as a form of control and dominance over women.

² Social constructionists assert that marital rape is a reflection of men's desire to retain traditionally held power in society and to protect themselves and their “property.”

³ Sex-role socialization theorists believe that marital rape is caused by an adoption of excessive traditional sex-role beliefs.

Marital Rape is the term generally used to describe sexual acts committed without a wife's consent and/or against her will by the law full husband. He may use physical force, treats of force to her or another person, or implied harm based on prior assaults, causing the woman to fear that physical force will be used if she resists.

The John Rideout case of 1978 which was the first time in the United States a man was prosecuted for raping his wife (held not guilty). The **Commonweath v. Chretien** case was the first marital rape conviction in the United States in 1979.

2. TRADITION:

The socio-legal area which is discussed in the research paper, it is important to understand the traditional background of marriage. Matrimonial literature is filled with such terms as “wife-capture” and “wife purchase,” which consider's wives as property.⁴ As time passed, however, wife purchase superseded capture as a means of obtaining a spouse.⁵ Contrary to it in recently on 27 September 2018, even Supreme Court of Indian made it clear that wife is not the property of her husband by scraping adultery law from the Act.⁶

3. CLASSIFICATION OF MARITAL RAPE:

A. Mental Force

Mental sexual coercion said to be classified into two ways:

- i. **Social or cultural Coercion-** This is a sort of coercion which summons the belief in “wifely duty”. That it is the wife's inherent responsibility to satisfy her husband materially and mentally even if she finds the act undesirable, unpleasant and even filthy. The sarcasm is that so-called “social arrangement” or its better it could be said “Social coercion” is the most common form of sexual coercion.
- ii. **Relational Coercion-** Relational coercion occurs when a husband uses his know-hows or power in the relationship to force his wife to comply with his sexual demands. For instance, the married women in her sample complied with their husbands' demands for intercourse because it was expected, as their husbands spent money on their wives for maintenance, the wife should indulge every time and every kind of sexual activity desired by husband even though the act was unwelcomed.

B. Physical Force

Physical sexual coercion said to be classified into two ways:

⁴ Howard, G.E. (1964). A History of Matrimonial Institutions. (p. 179). Humanities Press: New York, Vol. I.

⁵ Joseph Shine vs Union Of India Writ Petition (CrI.), 194 of 2017.

⁶ Section 497, Indian Penal Code, 1860.

- i. **Revenge rape-** Revenge rape was the most known form of marital rape in the countries where it is criminalized. In these cases, marital rape executed in addition with general violence in the relationship, rather than conflict of sexual provocation. This sort of act said to be “anger rape, committed by men as an act of hostility, retaliation, and humiliation towards women. This type of rape employs expressive violence to cause women pain and injury.
- ii. **Sadistic Rape-** Now a days, due to easy access to pornography this brutal and cold-hearted approach of rape becoming common. Marriages with obsessive rapes were characterized by unusual sexual activities, such as bondage and the use or re-enactment of pornography. Such sadistic rape involves violence as a means for sexual arousal.

4. INDIAN JURISPRUDANCE:

In India rape is the most common crime against women⁷ and even then a large number of rapes go unreported⁸. Still After 3rd February 2013, when the definition was revised, it is provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exceptions — 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape⁹. Government officials argued that the contract of marriage assumes consent to sex and that criminalising marital rape in turn would degrade family values in India¹⁰.

5. BATTERED WIFE SYNDROME:

Battered Woman Syndrome put forth the idea that women who are repeatedly subjected to forceful physical or psychological abuse¹¹. Victim suffering from the syndrome, may develop a learned vulnerability, make her believe that she deserves the abuse as it is part of her routine. Which is why women don't acknowledge the abuse she is going through to her friends, family or police.

A. Symptoms

Some symptoms that a woman is in such an abusive relationship may think the abuse is her fault, horrified for her life or her kins life as she absurdly believe that the abuser is all-knowing and watching her every movement, hide the abuse from friends and family as she afraid and never know what side of her partner she'll see that day — a loving partner or an abuse¹².

⁷ "Chapter 5: Crime against women", Crime in India 2012 Statistics (PDF), National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India, p. 81, archived from the original (PDF) on 16 January 2016.

⁸ Lora Prabhu, Sarah Pilot (2014-03-11). *The Fear that Stalks: Gender-based Violence in Public Spaces*. Zubaan. p. 79. ISBN 9789383074112.

⁹ Section 375 of IPC1860, Criminal Law (Amendment) Act 2013.

¹⁰ Available at- <https://www.ndtv.com/india-news/marital-rape-not-criminal-offence-mps-committee-backs-govt-514884> (Last Seen-04/12/2019).

¹¹ Walker, L. (1979). *The Battered Woman*. Harper Collins: New York. (Also termed Battered Wife Syndrome)

¹² Available on- <https://www.healthline.com/health/battered-woman-syndrome> (Last Seen- 05/02/2019).

B. Consequences

Generally at the end in maximum cases to escape abuse either wife kills herself or her partner. Following threats of sexual and violent abuse against herself and her daughter, the defendant killed her obsessive, jealous, controlling partner while he was restrained by handcuffs, blindfolded and gagged as part of their regular sexual activity. The term of five years' imprisonment was reduced to three and a half years because of the terrifying threats made by a man determined to dominate and control the defendant's life. The threats created a genuine fear for the safety of herself and more significantly, her daughter, and this caused the defendant to lose control and make the ferocious attack¹³.

6. GLOBAL COMPARISON:

A. Marital Rape Ratio:

According to a study carried out in *India* (Uttar Pradesh), it was observed that newly married women became victim of emotional, physical and foremost, sexual violence, due to which they are suffering from sexually transmitted disease in the last few years¹⁴. In *Turkey*, among 200 married women 53% were at least once exposed to sexual violence by their spouses and 33% of those were in form of rape¹⁵. In *Pakistan* (Karachi), data recruited from two teaching hospitals indicated that among 304 women between the ages 15-48, 23% stated that they were subjected to marital rape¹⁶. A study carried out with 414 females in the University Community of *Benin*, 76 (18.4%) of the participants were victims of non-consensual sex and 36 of those were in their current relationship¹⁷. In a survey in *United States of America*, women who were exposed to marital rape indicated that only 17% of the cases were limited to a one-time rape, 8% of the women were raped twice, 15% three to ten times, 5% eleven to twelve times, 55% more than twenty times in the same marriage¹⁸.

B. Legal Prudence:

Previously English common law, enforced in *North America* and the *British Commonwealth*, where the perception of marital rape was treated as 'castle in the air'. It was stated that "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the

¹³ *R v Charlton* (2003) EWCA Crim 415

¹⁴ Sudha S, Morrison S. Marital violence and women's reproductive health care in Uttar Pradesh, India. *Womens Health Issues* 2011;21(3):214-21.

¹⁵ Ipekten Alaman M, Yıldız H. Domestic Sexual Violence and Sexual Problems Among Gynecology Outpatients: An Example from Turkey. *Women Health* 2014,54(5):439-54.

¹⁶ Ali FA, Israr SM, Ali BS, Janjua NZ. Association of various reproductive rights, domestic violence and marital rape with depression among Pakistani women. *BMC Psychiatry* 2009;9:77.

¹⁷ Gharoro EP, Enabudoso EJ, Sodje DK. Non-consensual sex in Benin. *Niger J Clin Pract* 201;14(2):190-4.

¹⁸ Bıçak V. Kadının cinsel iradesinin eşine karşı korunması. In: Çiftçi O, editörler. 20 Yüzyılın Sonunda Kadınlar ve Gelecek Konferansı; 1997 19- 21 Kasım, Ankara: TODAI. 1998. p.135-48.

wife hath given up herself in this kind unto her husband, which she cannot retract."¹⁹ *Eutopia*²⁰, *South Sudan*²¹ including *India* are of those countries who are still orthodox in this respect.

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. *Namibian*²² law states that: "No marriage or other relationship shall constitute a defence to a charge of rape under this Act. In *Bhutan*²³ 'Marital rape' is specifically defined as: "A defendant shall be guilty of marital rape, if the defendant engages in sexual intercourse with one's own spouse without consent or against the will of the other spouse". *Soviet Union*²⁴, *Yugoslavia*²⁵, *USA* and many other developing and developed countries initiated to form marital rape laws accordingly.

7. SAFETY MEASURES

A safety plan is a personalized, practical plan that includes ways to remain safe while in a relationship, planning to leave, or after you leave. Safety planning involves how to cope with emotions, tell friends and family about the abuse, take legal action and more. Some recommendations are as follows-

- The woman against whom the offence of rape has been committed shall be sent for medical examination within 24 hours of receiving the complaint.
- The medical examination shall be conducted with the consent of the victim or with the consent of a competent person on her behalf.
- Rape victim shall be examined by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner and DNA samples along with other medical evidence should be secured, which can be cross-examined again and again whenever it is required.
- Physiological examination should be conducted on both victim and culprit.

8. LIMITATIONS:

Being a prudent race, human believes in progress, to meet the need and conflict of issues of the progressive society, law plays vital role. 'Law' and 'social need' always grow parallel and along

¹⁹ [Sir Matthew Hale](#), (1609-1676), in his legal treatise [Historia Placitorum Coronæ](#) or *History of the Pleas of the Crown*.

²⁰ Article 620 of "[The Criminal Code of the Federal Democratic Republic of Ethiopia](#)".

²¹ Article 247 of [Government of the Republic of South Sudan - Official Portal](#).

²² The Combating of Rape Act (No. 8 of 2000).

²³ Article 199 of "Penal Code of Bhutan, 2004"

²⁴ The first criminal law code in Soviet Russia differed from Tsarist law on rape: "although the Tsarist law explicitly excluded marital rape, the Soviet law code of 1922 did not." *Rule, Wilma (1996). Russian women in politics and society. Greenwood Publishing Group. p. 160. ISBN 978-0-313-29363-4.* Marital rape was explicitly included in the 1960 code.

²⁵ With the new 1974 Yugoslav Constitution each republic adopted their own Criminal Act, with Socialist Republic of Slovenia introducing rape of wife in its 1977 Criminal Act; (any) rape is not gender specific since 1995 Criminal Code (Art. 180), current Criminal Code is from 2008 (Art. 170)

with such growth there comes some lacunas, to meet such lacunas our legal system either create some exceptions or amendments or both.

Inherent approach of the paper is feminist, but aftereffect of such approach cannot be neglected. Thus here are some points to ponder.

- Now a days it is very common practice that privileges and safety granted under Indian law to protect women, are misused as a weapon to dominate man and his family by women itself, so honourable court should look thoroughly into the matter, whether the case is an appropriate matter to bring before the court.(ride out case)
- Laws should be more specific on Live-in-relationship and forced intercourse in this reference as well.
- Laws on marital rape would make it easy for woman to make a false report in order to convict an innocent man for rape. So some measures required to be fulfilled, before and after allegation assumed on the man²⁶,

9. CONCLUSION

“Marital rape is not a husband’s privilege, but rather a violent act and an injustice that must be criminalized”²⁷. We have a lot of wolves in the street but sometimes they live inside our house under sheep's skin.²⁸ And our Home Affairs minister Haribhai Chaudhary had said that marital rape can’t be made a criminal offence in India because of high illiteracy rate, poverty, extreme religious beliefs and the very ‘sanctity’ of marriage²⁹. The victims of marital sexual abuse demonstrate medical and psychological problems following the incident. Nightmares, distrust, persistent fears, depression and posttraumatic stress disorder are among the psychological problems. Today it is mandatory to enact a law criminalizing marital rape. At the same time the fact of much importance is that, the legislation should be designed in such a manner that it should not be misused as there is very thin line between rape, marital rape, and intimacy during living relationship or wedlock.

²⁶ Sherry Fairar, Testimony before the Judiciary Committee, January 22, 1975.

²⁷ Justice J.B. Pardiwala of the Gujarat High Court.

²⁸ Rajneesh Gautam, Founder and Director, Saitan theatre group.

²⁹ Available on- <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/Why-isnt-marital-rape-a-criminal-offence-in-India/articleshow/54223996.cms> (Last Seen 06/02/2019).