

Marital Rape: A Socio Legal Irony of India

Author

Dr. Ashutosh Bairagi

Professor, Shri Vaishnav Institute of Law

Shri Vaishnav Vidyapeeth Vishwavidyalaya, Indore, M.P., India

Abstract:

Marriage, a sacred institution, raises complex questions about rights and consent. Legal definitions of rape based on lack of consent pose challenges when applied in marital contexts. The controversial issue of marital rape remains unresolved by law in India, making it one of the last 36 countries that have not criminalized this form of violence within marriage. Globally, many jurisdictions do not recognize marital rape as a criminal offense, often due to exemptions in the law for spouses. Commonly called the "marital rape exception clause", this legal gap leaves victims unprotected within marital unions. Similarly, despite providing protections against other forms of abuse, India lacks laws that classify marital rape as a crime. This absence of legal protection highlights a gap in addressing the full spectrum of women's rights within marriage. Cases of non-consensual sexual activity perpetrated by husbands are ignored, undermining women's dignity and autonomy. As we explore the concept of marital rape, its prevalence globally and the specific Indian context, it becomes clear that there is an urgent need to address the protection of women's rights within marriage.

Keywords: Marriage, Sacrament, Same Sex, IPC, Constitution, Rights.

Introduction

When a woman is raped by another person, she has to live with that painful memory throughout her life, but when the rape is done by her husband, she has to live with the pain as well as with the rapist. This becomes more difficult when from society to law, women's consent is not given any special importance in the bond of marriage and having physical relations without consent by the husband is not considered as sexual violence or rape.

Marital rape is a widespread but often silent issue that affects women globally, including in India. It is a form of domestic violence where there is a lack of sexual consent within a marriage.

Marital rape is a widespread but often silent issue that affects women globally, including in India. It is a form of domestic violence where there is a lack of sexual consent within a marriage. Marriage is an important rule of Indian society and the society expects that every person should follow it and be in marital relationship with some person in his life and thus being sexual

becomes quite common for every married person. And having sexual activities after marriage is also considered completely normal. Also, it is expected from a married woman that it is her duty to provide sexual pleasure to her husband or partner.

But when a relationship with a woman is established forcefully without ever paying attention to her personal needs, then even though there is a serious violation of personal autonomy and dignity, there are no rules for women through which they can protect themselves. To demand justice. Even today there is no law made against marital rape in the country.

In such a situation, the question arises whether marital rape is such a cruel system which has been approved by the culture of marriage. It should not seem unfair to say this because till date marital rape is not a crime under Indian law.

Understand what marital rape is

Marital rape is rape that is committed by a person to whom the victim is married, i.e. her husband. This is a relationship created without the wife's will by force, threat or physical violence. At a time when the wife does not consent.

Statistics testify

The third (2005-06) and fourth (2015-16) rounds of the National Family Health Survey (NFHS) reveal that the lack of legal protection against marital rape is a matter of great concern for India. Intimate partner violence against women increased from 3 percent to 43 percent in different states of the country.

The 5th round of the National Family Health Survey was conducted in 2019-20. The survey was conducted in about 637,000 households in 707 districts of 28 states and eight union territories. It was found that in India, 1 in 3 women in the age group of 18-49 were victims of violence, out of which at least 5%-6% women complain of sexual violence.

According to NFHS survey 5.6% of married women were physically forced to have sex with their husbands, 2.7% of women were physically forced to perform sexual activities that they did not want to do , and 3.7% of women were forced to have sex against their will through threats.

According to NFHS data collected till 2021, 82% of married men admit to committing sexual violence against their wives. Also, 13.7% men admitted that they used to commit sexual violence and this became the reason for their divorce.

It is not that such incidents happen only with uneducated women. A private study conducted by the Indian Court for Research on Women in 2002 reported that 56 percent of educated Indian women admitted that they had been sexually assaulted by their husbands against their will.

According to a 2013 UN survey based on six Asia Pacific countries, including India, of the 1000 men questioned, almost a quarter admitted that they had raped their wives.

Physical and emotional effects of marital rape

Marital rape can have many physical and emotional consequences, including:

Physical injuries to the vaginal and/or anal areas, such as sores, bruises, torn muscles, fatigue, and vomiting.

Broken bones, black eyes, bloody noses and knife wounds are common among women victims of assault and rape.

In female survivors, marital rape can cause a number of gynecological problems, including vaginal strain, pelvic inflammation, unwanted pregnancies, miscarriage, stillbirth, bladder infections, sexually transmitted diseases, HIV, and infertility.

The emotional effects of marital rape can range from PTSD and anxiety to shock and depression to suicidal thoughts.

Marital rape can cause long-term emotional problems, including insomnia, disordered eating, depression, intimacy problems, negative self-image, and sexual dysfunction.

About 18% of spousal rape survivors say their children witnessed the crime.

While many sexual assaults go unreported to authorities, marital rape is one of the most underreported cases. Only 36% of non-marital rape victims report their crimes to the police, and 77% of marital rape cases go unreported.

What is the reason for marital rape?

There are many reasons for marital rape such as-

1-In India, marriage is considered a bond of affection and trust. Here one gets acceptance of seven births. Here it is believed that after marriage the husband automatically gets consent to sexual relations.

2- Married people of the Pentecostal Christian religion say that maintaining the patriarchal system is a bargain in which women silently tolerate the authority of men in exchange for a little support. This means that remaining silent on marital rape encourages it. This is also a big reason in Indian society where women who are not financially independent and are dependent on their husbands never say anything about marital rape.

3- Pre-defined social and family roles are also a major reason for marital rape. Here it is believed that the sexual satisfaction of the husband and a happy family is the responsibility of the woman.

Women, individually and collectively, can play an important role in speaking out against marital rape and inspiring change. Let us try to understand through this article what women need to do against marital rape.

History-

Sir Matthew Hale (1609–1676) wrote in his History of the Pledge of the Crown that "a husband cannot be guilty of rape committed by himself on his lawful wife, because the wife by their mutual consent and agreement do not bind the husband in such manner." commits itself to a relationship that does not require the formality of consent."

These ideas of marriage and sexuality were challenged in most Western countries in the 1960s and 70s through the second wave of feminism, which gave women the right to self-determination and consent in all matters related to their bodies. Right of withdrawal granted. Besides, it also provided protection from marital rape. Before the 1970s, very few legal systems allowed for the prosecution of rape within marriage, but as the issue gradually began to arise, its influence became more widespread, with the result that most countries adopted rape in the latter half of the 20th century. Marital rape was declared a crime.

Today, marital rape has been declared a crime in more than 100 countries of the world, but unfortunately India is one of the 36 countries in the world where marital rape has still not been kept in the category of crime.

Status of marital rape in India

Marital rape is a behavior more widely experienced by women in India. It has been considered a form of domestic violence and physical abuse against women. The main reason for this is the patriarchal system of the society.

According to the NHFS-5 round of the National Family Health Survey, 35% of women have acknowledged physical, mental and emotional violence at the hands of their husbands.

In law, an act like rape is considered a crime under section 375/376 of the Indian Penal Code [IPC], according to which if a man has sexual intercourse with a woman against her consent or will then that act is rape. Apart from this, this section includes a total of 6 categories of consent related provisions and 2 exceptions.

The main thing is that "mens rea" (criminal state of mind of the person) is not explicitly mentioned in it. That is, the drafters have considered this act as a crime only on the basis of consent, whether the person has mens rea or not is not necessary for the formation of this crime, but still by the last exception in this section, the husband has sex with the wife without her consent. Sexual relations established by sex were not given the status of rape.

Exception 2 – Sexual intercourse or sexual act by a man with his wife, the wife not being less than fifteen years of age, is not rape.

(Hon'ble Supreme Court has now considered the age of wife as 18 years. In the case Independent Thought vs Union of India 2018)

Reading the wording of this exception, it becomes even more clear that when this law was made by the British in 1860, marital rape was set aside, perhaps their intention was to give protection to such husbands. This same colonial law is followed by our legal system even today because how is there enforcement of something which is not a crime?

However, there are some other legal provisions which provide protection against physical and sexual abuse of wives, which are as follows:

1. IPC Section 498A – Wife can file a complaint on the basis of cruelty against her husband, which also includes sexual abuse.
2. You can file a complaint for outraging modesty under IPC section 354. (Nimesh Bhai Bharat Bhai Desai vs State of Gujarat, 2018)
3. IPC Section 377 – The victim's wife can file a complaint for an act against nature. [Dilip Pandey and others vs. State of Chhattisgarh]
4. IPC Section 376B – Sexual intercourse without the consent of a wife who is living separately from her husband, whether under a decree of separation or otherwise, is rape and there is a provision of punishment ranging from 2 to 7 years and fine.
5. Under personal law acts – A wife can divorce her husband on the grounds of sexual cruelty.
6. Protection from Domestic Violence Act- A petition can be filed before the Magistrate on the basis of sexual abuse, but only if the husband violates the protection order.

On the lines of the above provisions, the legislature has been restraining itself from making an act like marital rape a crime. Wives can challenge their ill-treatment under these provisions but not under Section 375 of the IPC.

- The Justice Verma Committee report had recommended criminalizing marital rape, saying that by abolishing this law, women would be safe from abusive husbands, would be able to get the necessary support to recover from marital rape and would be able to protect themselves from domestic violence and sexual abuse. Will be able to. Also, this will not be a new crime, only its exception 2 will have to be amended, so that even a wife can be included in it.
- Due to this, the government while presenting its stand said – This will have a disruptive effect on the institution of marriage and will also violate the right to privacy. It will be misused just like legal provisions like Section 498A IPC and Protection from Domestic Violence Act.
- Judiciary's stand - Karnataka High Court held that if any man as husband is given relief under 375 IPC, it would be a violation of the woman's right to live a dignified life (Article 21) and

equality (Article 14). And Exception 2 of Section 375 does not meet the ambit of these fundamental rights. It is the job of the legislature to control these inequalities because such actions of husbands hurt the souls of wives.

The Case

In 2017, a woman filed a complaint against her husband, Mr Hrishikesh Sahu, accusing him of multiple offenses under the Indian Penal Code, 1860 (IPC), including rape, cruelty and threatening to cause harm. He was also accused of abusing his daughter and was charged with sexual assault under the Protection of Children from Sexual Offenses Act, 2012 (POSCO).

While the case was pending in the Sessions Court, Mr. Sahu filed a writ petition in the Karnataka High Court. He invoked the exception to marital rape in the IPC and requested for the charges against him to be dropped. However, on 23 February 2022, Justice M. Nagaprasanna rejected the petitioner's plea. The Court relied on the 2013 report written by Justice JS Verma Committee, which recommended removing the marital rape exception. The Court held that this exception is regressive and violates the right to equality by treating the wife as subordinate to her husband. The High Court said, 'No exception under the law can be so complete that it becomes a license to commit crimes against society.'

Mr Sahu filed a special leave petition in the Supreme Court of India on May 10, 2022, challenging the High Court decision. A three-judge bench comprising former Chief Justice of India NV Ramana, Justice Krishna Murari and Justice Hima Kohli granted an interim stay on the high court's decision to July 19, 2022. However, the State of Karnataka filed an affidavit expressing its support. High Court's decision.

Meanwhile, RIT Foundation, an NGO, along with other parties filed petitions in the Delhi High Court challenging the marital rape exception. On May 11, 2022, a division bench of Justices Rajeev Shakdhar and C. Hari Shankar delivered a split verdict in the case. Justice Shakdhar said that this exception is unconstitutional because it is discriminatory and violates a woman's bodily autonomy and expression. Justice Shankar, on the other hand, said that in the institution of marriage, sexual intercourse, whether consensual or non-consensual, is a legitimate expectation, making an exception for rape. Both judges allowed the parties to appeal the decision to the Supreme Court.

In late 2022, Dalit activist Ms. Ruth Manorama filed a new petition in the Supreme Court challenging the marital rape exception. On January 9, 2023, a bench of Chief Justice DY Chandrachud and Justice PS Narasimha clubbed these petitions and listed them all for hearing on.

Delhi High Court also gave its divided decision saying that as far as the husband having sexual intercourse with the wife without her consent is concerned, it is a violation of Article 14 and hence it should be struck down - Justice Rajeev Shakdhar.

However, Justice C Hari Shankar said that Exception 2 to Section 375 does not violate the Constitution. It is based on judicious differentiation and proper classification.

Today, out of 185 countries in the world, laws on marital rape have been made in 77 countries. Women have the right to file a report in 74 countries. In 34 countries including India, it is not believed that a husband can rape his wife.

Recent status

Supreme Court seeks Centre's stand on plea against marital rape exception in new criminal law

The Supreme Court sought the Centre's position on a plea challenging the marital rape exception under the new criminal laws.

Chief Justice D.Y. Chandrachud, Justice J.B. A bench headed by Pardiwala and Justice Manoj Mishra issued a notice regarding the petition by All India Democratic Women's Association (AIDWA), which is scheduled to be heard in July along with other petitions seeking to criminalize marital rape. Is. The new law retains this exception in the Indian Civil Code (BNS), section 63.

How can women raise their voice against marital rape?

Create awareness

The first step towards change is to raise awareness. Women can take advantage of social media platforms, blogs, and community networks to disseminate information about marital rape. By sharing articles, statistics, and personal narratives, they contribute to eliminating the stigma associated with this issue. Engaging in open conversations with friends, family, and colleagues helps challenge misconceptions and promote a broader understanding of the seriousness of marital rape.

Support and join advocacy groups

Participating in or supporting organizations that focus on ending domestic violence, including marital rape, enhances individual efforts. These groups often organize campaigns, workshops, and events to raise awareness and advocate for policy changes. By joining these initiatives, women can connect with like-minded individuals, share experiences and collectively work towards social change.

Legal awareness

It is important to understand the existing laws related to marital rape in India. India still lacks a specific law addressing marital rape. But they can get help under some other laws about which they should get information and seek help under them. Women should also advocate for legal reforms, working with organizations that attempt to close legal gaps and criminalize marital rape. Raising public awareness of the absence of such laws is essential to garnering support for legislative changes.

Connect with officials

It is important to empower survivors to report cases of marital rape. Women can play an active role by contacting local authorities such as the police and encouraging the development of support services, including counseling and legal aid. Establishing a bridge between survivors and law enforcement fosters a more responsive and supportive system.

Media engagement

Media plays an important role in forming public opinion. Women can actively engage with media outlets to share stories and perspectives on marital rape. By contributing to responsible reporting and participating in discussions, they can influence public discussion and challenge social norms that perpetuate gender-based violence. Media platforms can be powerful allies in breaking the silence on this deeply entrenched issue.

Educational initiatives

Advocating for comprehensive sex education is a proactive measure to prevent marital rape. By emphasizing educational programs including discussions on consent, boundaries, and healthy relationships, women contribute to building a culture that respects personal autonomy. Additionally, promoting initiatives that challenge harmful gender norms and stereotypes lay the foundation for healthier, more equitable relationships.

Legal reform

It is important to advocate for legal changes to create a stronger framework to address marital rape. Women can petition for legislative reforms that criminalize marital rape and engage with policy makers, lawmakers, and advocacy groups. By actively participating in legal discussions, women contribute to shaping laws that protect survivors and hold perpetrators accountable.

Voice raised across the world against marital rape

There is no doubt that marital rape is a violation of the fundamental rights of women. Especially the rights given in Articles 14 and 21 of the Constitution. The first discussion on marital rape began with the feminist movement in the 19th century. In the women's rights movement in America, the husband's right to marital intercourse was challenged. Many Suffragists like

Elizabeth Cady Stanton and Lucy Stone opposed it. British liberal-feminists John Stuart Mill and Harriet Taylor attacked the law's double standards regarding marital rape. This movement intensified when Free Love Movement spokesperson Voltairine de Cleyre and Emma Goldman joined this movement.

Moses Harman, a Kansas-based publisher and women's rights advocate, was jailed for an article he wrote calling for legislation to prevent marital rape.

Bertrand Russell, who received the Nobel Prize for Literature in 1950, lamented the condition of married women in his book *Marriage and Morals* (1929). they wrote

"Marriage is the simplest form of livelihood for women and the total amount of unwanted sex endured by women after marriage is much greater than that of prostitution."

In 1993, the United Nations for Human Rights declared marital rape a violation of human rights.

Conclusion

In the eyes of the law, sexual relations between married couples are considered legal, but this legality of sex has given husbands the freedom to forcefully have relations with their spouses. Before he is a husband he is a man. Before she is a wife she is a woman. Rape is rape even if it is committed by the husband within the walls of the married home. The institution of marriage should not under any circumstances give any person the privilege of establishing dominance or committing any illegal act which might otherwise be punished. Rape is a heinous crime that has many effects on a person's mental health and can also have many medical consequences.

This subject requires immediate attention and thorough discussion and the Constitution should offer a better remedy for the victims so that they feel free and safe from the wrongdoers. Justice should be provided so that it sets an example for the future. Justice delayed is justice denied.

References

- Constitution of India
- Indian Penal Code, 1860
- Bhartiya Nyay Samhita, 2023
- <https://nujlawreview.org/wp-content/uploads/2018/01/11-1-Raveena-Rao-Kallakuru-Pradyumna-Soni.pdf>
- <https://www.theindiaforum.in/law/criminalising-marital-rape-india>
- <https://journals.sagepub.com/doi/10.1177/26318318221131745?icid=int.sj-full-text.similar-articles.2>

- <https://docs.manupatra.in/newsline/articles/Upload/8787A55C-D93F-4589-8A68-A9A032AF0E.pdf>
- <https://ijlljs.in/wp-content/uploads/2015/06/MARITAL-RAPE-final-draft.pdf>
- https://journals.lww.com/indianjpsychiatry/fulltext/2013/55030/rape__legal_issues_in_mental_health_perspective.8.aspx
- <https://www.legalserviceindia.com/legal/article-7187-marital-rape-in-india-an-undefined-crime.html>