

## MARRIAGE AS A SACRED INSTITUTION- A DELUSIONAL PARANOIA (ARE WE REALLY SAFE TODAY?)

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**ABSTRACT:** *“Two people can only live as one when each is prepared to give and receive trust and understanding. Above that lies respect. Without respect for how the other feels, no marriage is worthwhile.”*

-Helen Hollick<sup>1</sup>

*Over the years, we as individuals have been accustomed to believe that “marriage” is the most sacred institution- though decided in heaven but arranged on earth. Marriage is believed to be a union of two souls held together by the sacred threads of trust, respect and love for one another. Consensual sex between a husband and wife is what helps maintain the sacred nature of marriage, but the moment he OR she says “NO” to have intercourse and is forced to do so against his or her will, this is where the concept of marital rape finds itself. Marriages are sacred indeed, but it gives you no license to rape. In a country like India, where on one side of the spectrum marital rapes are at a high and on the other hand, there is a complete absence of effective laws to deal with the situation at hand, one can only wonder whether the sanctity of marriage is still alive. Despite the increased recognition that the penal law in India have gained over the past years, the situation of marital rapes has only worsened with time. Hence this article intends to the understanding of the current scenario of marital rapes in India and the legal stand concerning the same.*

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<sup>1</sup>Helen Hollick, The Kingmaking, Silverwood Books UK (2011).

## INTRODUCTION THE CONCEPT OF MARITAL RAPE

In the words of Susan Brown Miller, "The ancient patriarchs who together wrote their original covenants used the rape of women to strengthen their male power, how could they view rape? Is it a man's crime against a woman? Women are wholly owned subsidiaries rather than independent beings. "

As such, as our country celebrates its 70th anniversary of independence, the women of India who continue to hide under a veil of fear and compassion have never been free and continue to exist. A terrifying existence under the kingdom of darkness awaits them "rape" is generally a concept which demeans a woman beyond a reasonable doubt but when it happens within the four walls of a house, or a home, the status of the woman is considered that of a wholly-owned subsidiary, never initially as independent persons, simply as a simple object used

India, the 7th largest country in the world with a whopping population of over 1.2 billion people, is a developing superpower, a superpower that has made great strides in almost every area they entered but we continue to fall behind in some ways Rape, as one of the forms of sexual violence, continues to be a common crime BUT even n Underreported today, sexual violence perpetrated within the four walls of a marital family is considered a private affair and family matter and therefore continues to not be subject to regulatory control. . In India, however, the justice system appears to be operating unfavourably. But before diving into this topic, it's important to understand the concept of marital rape.

## WHAT IS MARITAL RAPE NOT TAKEN SERIOUSLY? - WELCOMING THE HARSH REALITY

First things first, what is Marital Rape? In very simple words Marital Rape could be defined as,

***“An intercourse between a man and his wife without the consent of his wife obtained by force, threat of physical violence and mental torture where the woman is unable to give her consent.”***<sup>2</sup>

Newspapers back then and even today, are filled with stories of heinous incidents of rape incidents. It is only the fear of a woman losing her dignity and also being subjugated underneath the prevalent patriarchal thoughts of our society that makes the crime heinous but not the denial of a women’s consent to the act and oppression faced by her that forms the basis for claiming rape. In the case of marital rape, if we were to stick to the norms of our Indian society, the bond tagged as “sacred” in the eyes of society needs to be maintained at all costs, even if it at the cost of the woman having to lose her respect in the bargain, because women are more entangled in the threads of marital stereotypes, breaking out of which would take forever and hence, it becomes difficult to think of MARITAL RAPE AS A PUNISHABLE WORTHY CRIME IN INDIA. One can only wonder,

***“Is marriage to be considered a rightful license that the man of the house possesses, a contract for legal sex which doesn’t require the lady’s consent as an important element to the contract? Is rape to be accepted as our culture?”***

“Section 375 of the Indian Penal Code (IPC) defines rape as a criminal offence and states that a man commits rape if he has sexual intercourse with a woman without her consent or if she is a minor. However, according to **exception 2 to Section 375** “sexual intercourse by a man with his wife, the wife not being under

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<sup>2</sup> G.V. Akshaya, M. Kannappan, *A Study of Marital Rape in the Indian Legal Scenario*, 119 IJPAM 1089, 1089-1100 (2018).

fifteen years of age, is not rape. So, does this mean that Indian men above 14 years of age are “legally entitled” to rape their wives and then get to flee without being punished because we don’t have an appropriate law for the same? Now, this boils down to the ground reality that **“India is one of 36 countries in the world where marital rape hasn’t yet been criminalized.”**<sup>3</sup> In a recent judgment of the Supreme Court in *Independent Thought vs. Union of India*<sup>4</sup>, the Supreme Court criminalized unwilling sexual contact with a wife between fifteen and eighteen years of age. Now, this has further led to an increase of writ petitions being filed before the Supreme Court and High court challenging the validity of the exception as a whole.

This exception is away is also essentially a violation of Article 21<sup>5</sup> that states that “No person shall be denied of his life or personal liberty except for the procedure as laid down by law.” But if keeping this in mind, Exception 2 is brought into the picture, because the right to life also essentially composes of a right to a life of dignity and when the situation of marital rape occurs, isn’t that very dignity of a woman thrown into shambles are thereby lost? In *Justice K.S. Puttaswamy vs. Union of India*<sup>6</sup>, the Supreme Court has clearly stated that the right to privacy as a fundamental right is also composed of decisional privacy. Hence when a lady is made to have forced sex, she automatically loses her right of choice in the matter.”<sup>7</sup>

<sup>3</sup>Marital Rape in India: 36 countries where marital rape is not a crime, *India Today*, Mar. 12, 2016.

<sup>4</sup>(2013) 382 SCC (2017) (India).

<sup>5</sup>INDIA CONST. Art. 21.

<sup>6</sup>AIR 2017 SC 4161 (India).

<sup>7</sup> Indian Penal Code, 1860, No. 45, Act of Parliament, 1860 (India).

## MARITAL RAPE AND LAWS IN INDIA

“Even though India has only experienced increased levels of marital rape over the years, it continues to be a common but unresolved form of sadism that exists in society. While in other countries, either marital rape is criminalized or we see the judiciary playing an active role in recognizing it as a crime, in Indian courts The court was not even willing to accept marital rape as an offence because it was considered a "PERSONAL CAUSE" and not a "Public Cause" and thus continued to be concealed behind the photograph. the curtain of the institution of marriage.”<sup>8</sup>

As stated above, Article 375 of the Indian Penal Code defines rape and Article 376 provides punishment for rape, i.e., rapist will have a prison sentence of at least 7 years and the maximum is imprisonment for life or up to 10 years unless the woman is his wife and is not less than 12 years old, in which case he shall be sentenced to imprisonment in either description for a term of up to 2 years accompanied by a fine or both. Even so, married women continue to be violated by their husbands. Sometime after the Delhi gang-rape case in 2012, the Verma Judiciary Committee, headed by Justice JS Verma, was asked to propose amendments to the criminal law to ensure the criminal justice system faster trials and harsher sentences for those accused. commit rape. The 2013 report suggested replacing Sections 375, 376, 376 A with 376 D to make the law more effective, but this did not work. The main purpose of the 2013 amendments was to make the necessary changes to the definition of rape and to improve women. Access to justice and amendments to the Criminal Code and the Law of Evidence to ensure that women do not become victims when seeking justice after an act of rape against them. India's Domestic Violence Act of 2005 considers marital

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<sup>8</sup> Bansari Kamdar, *In India a man can still legally rape his wife*, The Diplomat, (Aug. 17, 2020), <https://thediplomat.com/2020/08/in-india-a-man-can-still-legally-rape-his-wife/>

rape a form of domestic violence and provides for a lower prison sentence than extramarital rape.

Despite various civil and remedial remedies, marital rape cases are on the rise, BUT the courts continue to ignore the crime. In the case of Sree Kumar v. Pearly Karun, commented that not living separately from her husband on the grounds of judicial separation and having sexual intercourse against her will, behaviour does not constitute rape and therefore it is said that the husband is not charged guilty. raped his wife even though he was guilty of committing or committing the act.

The courts found inadequacies in the rape law and recommended changes to the law because the need for new sexual assault laws arose. It was enough to tolerate the ineffectiveness of the legal framework. Therefore, in a generation of social reform to which we belong, we must work towards building laws that would criminalize marital rape. It will certainly be a road not taken but it is the need of the hour. But in India, this is quite different from the current scenario, where marital rape is not even considered a topic worth pondering.

### **MARITAL RAPE: HOW SERIOUS IS THE PROBLEM IN INDIA AND HOW HAS LOCKDOWN AGGRAVATED THE ISSUE?**

*“When a stranger does it, he doesn’t know me, I don’t know him. He’s not doing it to me as a person, personally. With your husband, it becomes personal. You say this man knows me. He knows my feelings. He knows me intimately and then to do this to me – it’s such personal abuse.*

It has always been thought that a woman being raped by her partner is less traumatic, but that is a myth. Studies show that marital rape has serious and long-lasting consequences for women because of the simple fact that the rapist is none other than her ex-husband whom she expected to live a happy life with. After marriage, the women are treated as a piece of property acquired by the husband.

All of these practices and customs that give rise to masculine self-esteem led to sophisticated prominence, leading men to believe that they can do anything with their wives and that sexual consent is granted if they agree to marry him. So marital rape affects a woman physically and mentally but when women finally find the courage to take the matter to court and see that the legal system treats rapes Marital Rape as an exception to rape, it lowers their confidence and belief in the justice system even more.”<sup>9</sup>

**“Spouse abuse is not just about one sex.** A common thought or thought that has existed in our society since time immemorial is that men should be strong, strong and often have to suppress their emotions. If they expose or expose their security holes, they will be labelled as stupid, ineffective, and many other derogatory terms. % of men experiencing gender-based violence in India, where 51.5% of men have experienced torture or violence by their wife or partner in their lifetime and 10.5% of men have experienced abuse from their wife or partner their partners are violent based on gender. in the past 12 months. 4,444 Marital rape numbers, whether it's HE/SHE rape, have risen at an alarming rate and have now become an even worse scenario as a nationwide ban is in place. Three months in prison this year saw more complaints than ten years ago. Most cases have been reported in UP, Bihar, Rajasthan and Haryana provinces. The coronavirus outbreak has left people trapped within the four walls of their homes, accompanied by fears of a lack of money, an increasingly threatening famine and an uncertain future. The women have to deal with violent partners at home and the virus outside. According to the report, 86% of women involved in violence did not seek help and 77% of victims did not tell anyone about the incident. The epidemic has created all kinds of obstacles for women to try to seek support from everywhere.

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<sup>9</sup> G.V. Akshaya, M. Kannappan, *A Study of Marital Rape in the Indian Legal Scenario*, 119 IJPAM 1089, 1089-1100 (2018).

Domestic violence in India is a burning problem and has only worsened in recent years. About 70% of women in India are victims of domestic violence. The National Crime Records Bureau (NCRB) 2019 report on crime in India is disturbing but not surprising. According to reports, in India, a woman is raped every 16 minutes and every four minutes she suffers cruelty from lawless people. An analysis of data from the National Family Health Survey (NFHS) 201516 indicates that about 99.1% of incidents of sexual violence go unreported and that the average Indian woman is 17 times more likely to experience sexual violence of her husband than the others. Despite recent changes in criminal law, various laws designed to protect women against domestic violence and sexual assault have remained largely ineffective. But what happens when the law protects the perpetrator and endangers the victim?"<sup>10</sup>

## CONCLUSION

“India, arguing that rape by a spouse should be criminalized because it can be achieved by applying an individual legal approach to violence against women. A group of Indian women has succeeded in raising awareness about domestic violence and passing laws, but with no complete success. It criminalized marital rape by removing the distinction between marital rape and raping strangers. But until lawmakers and society recognize each woman's right to marry, marital rape is a crime and no punishment.

Thoughts of women's sexuality and, by extension, unlawful marital rape in Indian society arise from ideas of women's rights and individual autonomy, but also from thoughts of gender, shame, and family honour. They believe that people believe in their physical integrity, and their humanity, and that marital rape and punishment is a legitimate choice, and a rhetorical approach to

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<sup>10</sup> *License To Rape: Sexual Abuse Of Wives* by D Finkelhor and K Yllo (1987) Criminal Justice Policy Review



individual rights is sometimes used to criminalize rape between Indian couples in order to change existing policies. In Western countries, activists seek to challenge cultural assumptions about marital relations within the framework of individual rights. The individual rights paradigm may play a role in India, where the cultural family is also preventing communities and even women's organizations from speaking up. About the rape behaviour between the couple. As above, spousal rape is not fully criminalized in India. It is a serious form of violence against women, and is notorious both publicly and nationally.”

“If we talk about rape or sexual harassment, under normal circumstances a person would refer to such offences as heinous ones. However, there is a "kind of" rape that is not illegal in India, and its perpetrators are not even considered criminals from the point of view of the law. And that is marital rape. According to Indian Criminal Code (IPC) Section 375 Exception 2, Sex by a man who is not under the age of 15 is not rape. According to a survey conducted by the United Nations Population Fund, more than two-thirds of married women aged 15 to 49 in India are beaten, raped, or forced to have sex. To decipher, in India it is legal for you to rape the woman you married her. We lived in 2021 and this is the barbaric level of South Korea.

India is a country that allows perpetrators of such looting to move around freely and that punishment only occurs years after the crime has occurred. Exactly what happened in the 2012 Delhi Gang Rape Murder Case? How do you think couple rape can be punished in this scenario with the cruellest rape case in history? Is there any way Indian marriage can access the concept of women's implicit consent? She is my wife now, right? Of course, her consent applies 24 hours a day, 365 days a year.

Rape is rape and indeed that is the end of the sentence. No condition, whatever it is, can deny the author of his monstrous behaviour. No, the victim's age, sex, gender and marital status do not matter. We inherited some of the most absurd criminal laws from the British Raj and it's sad to hear that they have remained

intact ever since. Society is changing day by day, day by day, as a community, we are making progress but the rules do not change. Marital rape is not allowed to exist as the implied consent of the parties involved, and marriage cannot have the perpetual consent of a woman. A "no" is no. It doesn't matter if your wife says it or someone else and both men and the Indian legal system have to stop there.”

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