



Marital Rape is a Social Stigma: No Reformatory Law Can Erase It

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Abstract : *Marriage is that intangible institution that unites the souls of two compatible human beings and becomes the harbinger of love, hope and ecstasy in their lives. In the context of the Indian society, it is believed that an "ideal wife" is one who sacrifices everything to ensure that her husband lives a peaceful life. Today, sadly, this archaic and appalling ideology has given birth to one of the grave manmade societal cataclysms: marital rape. The status of **women in India** has been subjected to many great changes over the past years.*

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Marital rape is a 'Forcible or Fraudulent' sexual intercourse imposed on women and men, both. Rape is seen as one of India's most common crimes against women. It is moreover a "National Problem" now.

Some legal experts believe the government is reluctant to criminalize marital rape because it would require them to change laws based on religious practices, including the Hindu Marriage Act 1955, which says a wife is duty-bound to have sex with her husband. Denying sex, according to traditional Hindu beliefs, goes against the duties of an IDEAL WIFE. It is common for courts to grant a divorce on the ground that a wife denies her husband sexual intercourse, ... the same goes with all religions.

The intention of our study is to highlight this issue, which people feel shy even to talk about openly. No one is ready to understand the pain of those women who undergo this trauma without sharing it with anyone. With our small initiative we have tried to explore the laws, measures and safeguards against marital rape and know the level of awareness among the people from the cross section of society.

Keywords : *Criminalize, Marital Rape, National Problem, Radical Feminism.*

Introduction :

When one mentions the word rape, the tendency is to think of someone who is a stranger, a malicious person. Usually one does not think of rape in the context of marriage. Women themselves find it difficult to believe that a husband can rape his wife. After all, how can a man be accused of rape if he is availing his conjugal rights. It is indicative that a woman has no right over her own body, and her will is subject to that of her husband. Our penal code does not classify it as an offence. Section 375 of IPC talks about rape with an exception to marital rape (if woman is above 18 years of age), so man has been given license to rape. Though marital rape is the most common and repugnant form of masochism in the Indian society, it is well hidden behind the iron curtain of marriage. While the legal definition varies, marital rape can be defined as any unwanted intercourse or penetration (vaginal, anal, or oral) obtained by force, threat of force, or when the wife is unable to consent. Despite the prevalence of marital rape, this problem has received relatively little attention from social scientists, practitioners, the criminal justice system, and larger society as a whole. The word 'rape' has been derived from the term 'rapio', which means 'to seize'. Rape is therefore, forcible seizure, or the ravishment of a woman without her consent, by force, fear or fraud. It involves coercive, non-consensual sexual intercourse with a woman. Rape can be viewed as an act of violence of the private person of a woman, an outrage by all means. It is the ultimate violation of the self of a woman. The Supreme Court of India has aptly described it as 'deathless shame and the gravest crime against human dignity'. According to the interpretation of section 376(1) if the wife is below 15 years then the husband is guilty of rape, This is the only remedy to marital rape, where age becomes the deciding factor. Even for this, lesser

punishment was prescribed, to facilitate reconciliation which has been removed by 2013 Criminal Amendment Act, 2013. Women do hold a remedy under 498 A of IPC but prima facie of marital rape is not mentioned here also. Domestic Violence Act of 2006 only provides civil remedy to marital rape as a part of domestic violence as some socialists believe that marital rape is just an extension of domestic violence.

Rape is not merely a physical assault, but is destructive of the whole persona of the victim. The law did not conceptualize it as an offence against the person of the woman, one that destroys her freedom; rather, it conceived rape as an instrument for protecting a man's property from the sexual aggressions of other men. Therefore, the act of rape within marriage was not recognized as an offence, as woman was considered the property of the husband, and a man could not be perceived to violate his own property. Marital rape is particularly complicated because the complex, personal nature of marital relationships makes it hard for the victim to even see herself as a victim, let alone reporting the offending act to the authorities, which is why marital rape is one of the highly under-reported violent crimes. Even the women who do consider themselves victims are disinclined to approach the authorities because they are financially dependent upon their husbands, and reporting the matter could very well result in withdrawal of financial support, leaving them and their children without food and shelter. The issue of marital rape is not addressed seriously though it violates Fundamental Rights under article 14 and 19. Legislators should realize that for maintaining the sanctity of the Constitution, dignity of women must be protected.

42nd Law Commission Reports also excluded marital rape from the ambit of section 375. But 84th Report disagreed with the suggestions of the

former. However, it was completely ignored. The Latest Law Commission Report did not recognize rape within the bonds of marriage, as it would amount to excessive interference in marital relationships.

On the contrary, Justice Verma Committee Report included marital rape as an offence which was supported by All India Democratic Women's Association Centre for Women Development Studies and many NGOs. Taking into account the global picture, we realize that marital rape is condemned by International Conventions and is increasingly criminalized. By 2006, over 104 countries in the world had outlawed marital rape.

Hypotheses :

The research study is based on the following hypotheses:

1. Patriarchal norms are leading to the dominance of men over the body of women.
2. Silence of servility among women,
3. Radical feminism is demanding legal safeguard, though Indian society is not prepared for it.

Objectives :

1. To find out the understanding of women about marital rape as different from rape.
2. To seek the opinion of women towards marital rape.
3. To assess the attitude of women towards making laws related to marital rape.
4. To assess the awareness of women regarding marital rape in a global context.

Methodology :

The research work is based on both Primary and Secondary data. The secondary data of the study is collected from books, journals magazines,

newspapers and internet data, as also from interviews scheduled. Purposive Incidental Sampling was done on cross sections of the society related to the subject. The sample size was fifty (50). The data has been analyzed through tables and bar graph.

Area of Study :

The area of study selected was residential and academic premises.

The residential area selected was Gardanibagh, because two of our investigators reside there and academic area "Patna, Women's College" was chosen, as we are familiar with our classmates and it was easy as they all belong to different sections of society, so it helped in getting a broader view of the society about the topic.

Result and Discussion :

Feudal norms predominate In the society of Bihar, so females have inhibitions in discussing family issues in public. Marriage and sex are considered very sensitive issues which need to be kept in the closet.

Very few were willing to share their thoughts. Interestingly, educated and working women were found quite reluctant in giving their responses. The moral sanctity of marriage and the glorious culture of subordination of women made them serve their husband's sexual urge; else they have a fear of adultery on the part of their husbands.

Women are essentially treated as a commodity and men as owners of the same, and marriage gives social legitimacy to men to have control over the body and mind of women. The harsh reality is that women accept this servility as a profound tradition of Indian civilization.

The most shocking result of the research was that even today most men repudiate the concept of marital rape and regard it irrelevant to some extent. In fact, according to them, marriage is a

sacred institution where women still have to submit to their husbands irrespective of their willingness. Not giving consent or taking initiative cannot be the natural role of women as the sexual urge is the prerogative of a man.

Our ability to gauge the prevalence and incidence of marital rape is likely to be seriously limited by underreporting and cultural factors that conspire to keep the rape victim invisible.

Research indicates that when victims do seek assistance for marital rape, there is often a failure because of others, including police officers, health care providers, religious advisers, advocates, and counsellors, to provide adequate assistance. Furthermore, there is a need to start programmes for abusive men. To address sexual violence in their work, global amendments in this law need to be catered to.

Conclusion :

Social construction of marital rape adheres to religious and social philosophies of male domination. Laws, therefore, can be effective only if women are awakened. Silence of servility among women regarding sex, has made the issue more critical. Radical feminism demands legal safeguards but Indian Society is not legitimating it.

Social evils like the prevalence of orthodoxy and patriarchy is still seen in the society. As a consequence, married women may hesitate to question forced sex because they believe they have no right to refuse sexual advances made by their husbands (as they are duty bound to have sex with husbands). In fact, raped wives will often not recognize themselves as such. Instead, a wife may view the rape as part of a marital conflict for which she is to blame or that her own sexual inadequacy was responsible. The harsh result is that the personal shame and self-blame that raped wives experience is often reinforced by an equally blaming culture.

The research found no significant difference between marital rape and stranger rape in terms of psychiatric disorders (e.g., major depression, obsessive-compulsive disorder, social phobia and sexual dysfunction). The research refutes the cultural stereotype that marital rape is somehow less traumatizing than stranger rape. Marital rape within relationships is an important independent contributor to severity of post-trauma distress. The family environment in which marital rape occurs thus increases inequality, fear, constant threat, and a sense of loss of loving relationships. This is likely to have significant impact on all family relationships and functioning in many domains.

Thus our major **findings** were:

1. Fear amongst women to be ridiculed in society.
2. Laws if made will die a natural death.
3. Hesitation in expression with regard to sexual matters.
4. Reluctance to label the experience as "rape".
5. Most men still repudiate the concept of marital rape.

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