

*Editorial*

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## Marital Rape: critical ethical and legal issues

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### Introduction

India's rape laws don't apply if a man rapes his wife. Marriage is a license to rape in India. No doesn't mean **NO** in a marriage in India. Domestic violence in India is an entrenched problem, and it has only been exacerbated in recent years. According to the National Crime Records Bureau's (NCRB) 'Crime in India' report, about 70% of women in India are victims of domestic violence. One such manifestation of this domestic violence is Marital rape. Marital rape, the act of forcing your spouse into having sex without proper consent, is an unjust yet not uncommon way to degrade and disempower women. Today, Marital rape has been impeached in more than 100 countries but, unfortunately, India is one of the only 36 countries where marital rape is still not criminalized. Even though many legal amendments have been done in criminal law for the protection of the women, the non-criminalization of marital rape in India undermines the dignity and human rights of women. In India, only 2–4% women seek help from authorities with respect to marital rape. The inability to talk about the abuse and seek help also negatively impacts women's mental health, exacerbating the stress, anxiety and depressive symptoms experienced by victims along with posttraumatic stress disorder. The evidence suggests that the mental health burden from marital rape in India is potentially high. However, societal inattention to the issue, lack of infrastructure and procedure for screening, comorbid exposures and lack of help-seeking avenues, it has been challenging to estimate the consequences of marital rape within Indian society

### What is Marital Rape?

Section 375 of the Indian Penal Code defines rape as "non-consensual sexual intercourse with a woman". However, it exempts the husband from any penal consequences if he forces intercourse on his wife without her consent, given that his wife is above the age of 15 years. The 15 years bit was written down to 18 years by the Supreme Court. Marriage in India under the law means irrevocable implied consent. Rape occurring within a marital between husband and wife without consent implies marital rape.

### History of Marital Rape in India

In 1889, Phulmani Dasi a 10 year old child bride died because of her 35 years old husband raped her, and cited his right to have sex with his wife according to the contract of marriage. The government at the time tried to bring the age of consent bill but the bill faced severe opposition from many upper caste Hindu sections of the society. An incident that happened more than a century ago are imperative in our understanding of why India has still not criminalized marital rape. Historically, our society has found it difficult to comprehend the concept of marital rape. "How is it rape if they are married?" The underlying assumptions is even more disheartening. It seems to imply that the only collateral damage to rape is the ignominy and no one would want to marry the raped woman. Therefore, if a woman is already married, why is she complaining? More disturbingly, it also suggests that marriage is a legitimate license for a man to live out his base, animal instincts without any regard for his wife's self-respect and dignity.

According to Hindu scriptures, no religious rites can be performed with perfection by a man without the equal participation of his wife in any religious rites. Wives are thus called '*Ardhangani*'. They are supposed to be given not only importance but equal position with men in the society. But is it happening at all in our country?

### **Does Marriage imply a contract for Sex**

Yes, in India it can be practically true, here a marriage is seen as a contract or deal between two families and individuals where the daughter (bride) is treated as an object who is offered to the man during their marriage, termed as '*Kanyadaan*'. Hence, the husband gets the right over the wife in total. In India, marriage is regarded as an institution, a sacred bond that brings two individuals together for their joint pursuit of *Dharma* (duty), *Artha* (possessions), *Kama* (sexual desires) and *Moksha* (salvation); at least in theory accepted in our society.

The concept of marital rape in India is the epitome of what we call an "implied consent". Marriage between a man and a woman here implies that both have consented to sexual intercourse and it cannot be otherwise. In India, women have mostly not given equal importance; their position is still not what it should have been. Women have at times been considered inferior as compared to men, which have led to India being developed as a country with male chauvinist ideologies. Women in India are subjected to criminal atrocities such as rape, domestic violence, sexual harassment, trafficking and forced prostitution. This is just a small part of a never-ending list of crimes against women. Marital Rape refers to the sexual intercourse between a man and a woman, who are legally accepted as husband and wife, where the woman does not give consent for such intercourse. Marriage gives right to the husband and wife to lawfully consummate their marriage. Marriage is a stable relationship in which a man and a woman are socially permitted to have children implying the right to sexual relationships.

Being a part of the wedlock does not permit the man to forcefully have sex with his wife. The right to have sexual intercourse must be consensual and not an obligation of his wife. The wife should have the liberty to refuse to have sex and cannot be compelled by her husband to do it. Even today the law system in India does not recognize marital Rape as a crime. On 6th August 2021, the Kerala High court upholds marital Rape as a good ground to claim divorce.

### **Possible causes of Marital Rape**

1. **Dominance of gender:** When the discord between spouses increases, the husband may try to assert himself by forcing himself upon the woman. In an attempt to one-up, his wife will use the ultimate weapon in his arsenal to demean and degrade her. In this way he is showing his dominion over her and destroying her privacy. By doing so, he is insulting what the woman considers most sacred. While the act of rape in itself is heinous, it is often the elaborate process of insulting, attacking and disrobing the victim that makes marital rape particularly demeaning for the woman and the society as a whole.
2. **Power: Sexual dissonance between the couple:** At times the woman may not be interested in sex for reasons that are clear only to her and may refuse her husband. Men are generally more oversexed than women are. So, when the man is denied sex, he treats it as an insult to his manhood. It is also said that anatomically, the female body is designed to receive the sexual activity and the male body is meant to give. When the wife refuses sex, it could be because she has had a history of sexual abuse at a young age and may not view sex as a positive, pleasurable activity. Hence, she may not receive it the way the husband expects her to. He may therefore not feel accepted because he is denied from performing the sexual act. This in turn causes discord between the couple. It is also believed that a man in a bid to overcome the humiliation of sexual rejection, will eventually force himself upon the wife.

### Effects of Marital Rape

Marital Rape has more severe and long-lasting consequences for any individual because of the simple fact that the rapist is none other than her husband/ wife with whom a lifetime of happiness was expected.

**Physical effects:** The physical effects of Marital Rape include injuries to private organs, bruises, torn muscles, lacerations, fatigue, fractures etc. Women who are subjected to physical violence, as well as rape, suffer from other complications like blackened eyes, broken bones, and wounds inflicted by any sort of weapon, during sexual violence. Women also go through various hazards due to Marital Rape like forced pregnancy, miscarriages, abortions. Sexual infections, infertility and also the chances of diseases like HIV etc.

**Psychological effects:** The trauma a woman goes through when her own husband repeatedly rapes her cannot be explained in words. The psychological effects are far worse than the physical effects, some of the short-term psychological effects are shock, fear, stress, suicidal tendencies, panic disorder, clinical depression, anxiety, low self-esteem, low self-confidence, deep self-hatred etc. In extreme cases it can lead to Post Traumatic Disorder requiring intensive Psychiatric interventions. Marital Rapes cannot disappear totally. Rape or any crime for that matter is individualistic even if they are laws made to protect the victim and to punish the criminal.

What needed is awareness. Both, the husband and the wife should be treated for the problem relating to their sexual life. Approaching a psychologist or a psychiatrist is imperative to get treated through medicine along with psychotherapy. The victim and the perpetrator are thoroughly examined to have an idea about their personality make up as well as mental state, including a study of their childhood, especially with respect to their equation with their parents.

### Status of Marital Rape in India

- The definition of rape codified in Section 375 of the Indian Penal Code (IPC) includes all forms of sexual assault involving non-consensual intercourse with a woman.
- Non-Criminalization of marital rape in India emanates from Exception 2 to Section 375.
- However, Exception 2 to Section 375 exempts unwilling sexual intercourse between a husband and a wife over fifteen years of age from Section 375's definition of "rape" and thus immunizes such acts from prosecution.
- As per current law, a wife is presumed to deliver perpetual consent to have sex with her husband after entering into marital relations.
- Article 21 of the Indian constitution states "Protection of life and personal liberty". The article includes the right to live with personal liberty and dignity but if a female is forcefully asked to have sexual intercourse with her husband, then the validity of her right to exercise her personal liberty is questionable and her dignity is affected. An exception to Section 375 of the Indian Penal Code violates this right given to all females.

### Conclusions

In the current scenario Marital Rape can be only seen as rape which is legally permissible that negates the element of consent from the woman. Though the Marital Rape is centered around women in India there are instances where a man /husband is forced to have sexual intercourse with his wife or a with a woman with intimate personal relations. Hence, while deciding the judicial aspects and criminalizing Marital Rape all the aspects need to be cared with equal justice for all the citizen of India irrespective of their gender. It is high time that the judicial system in India makes laws criminalizing marital Rape to preserve the dignity and psychological wellbeing of the woman.

Almost all studies show an association between marital rape and adverse mental health outcomes, despite likely widespread underestimation of marital sexual abuse prevalence. The qualitative studies provided relevant context regarding the lack of recognition of actions that may be considered abuse and mental health symptoms. Thus, further research in the association between marital sexual abuse and poor health outcomes, especially mental health is needed.

Marital rape violates fundamental human rights and is linked to adverse psychological consequences. Lawmakers should be made aware of these highly adverse effects, as it may motivate criminalization of marital rape in India. Marital rape and its effects on health and wellbeing warrants greater scholarly focus and nuanced, sensitive research to drive informed and evidence-based decision making. Further research into various facets of this phenomenon are needed.

### RECOMMENDED REFERENCES

1. Agarwal N, Abdalla SM, Cohen GH. Marital rape and its impact on the mental health of women in India: A systematic review. PLOS Glob Pub Health 2022;2(6):e0000601.
2. Deosthali PB, Rege S, Arora S. Women's experiences of marital rape and sexual violence within marriage in India: evidence from service records. Sexual Reprod Health Matters 2022;29(2):2048455.
3. Bhat M, Ullman SE. Examining marital violence in India: Review and recommendations for future research and practice. Trauma Viol Abuse 2014;15(1):57-74.
4. Yllö KE, Torres M. Marital rape: Consent, marriage, and social change in global context. Oxford University Press; 2016.
5. Chattopadhyay S. The responses of health systems to marital sexual violence—A perspective from Southern India. J Aggress Maltreat Trauma 2019;28(1):47-67.
6. Jiloha RC. Rape: Legal issues in mental health perspective. Indian J Psychiatry 2013;55(3):250-5.

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