

## **Marital Rape In The 21<sup>st</sup> Century: Another Long Battle For Women**

Women have invariably been treated as an inferior being in every social equation since ages. A woman's consent or opinion has always been given the least importance while making any decision; even if it is regarding her own life. So it definitely shouldn't come as a shock that a woman can be raped and forced to have sex without her consent by her own husband; in a relationship that is supposed to embody love, respect and equality in all aspects of life.

It does though; it delivers a big blow to all the women in the world, that in the twenty-first century, when women are gradually standing up for their rights and trying to protect the future generations from all the atrocities they have faced in the hands of this patriarchal society, there are still several women in different parts of the world who are being abused and forced to do something against their will. The worst part of it all: they have no right to speak up because their tormentors, their abusers, their predators, are not strangers but their very own husbands.

Most women do not even consider this heinous act as a crime because as a female born in a predominantly patriarchal society, women are conditioned to believe that after marriage their husbands are their 'protectors' and that he can do no wrong. Therefore, the concept of being 'forced' into doing intimate acts or having sex with their husbands is something that falls under the purview of being a 'wife'.

Most of the times women blame themselves and feel sexually inadequate for their husbands, without realizing that this regressive society has molded them into thinking that another person, more specifically the male they are married to, has more right over their bodies than they themselves do. For being the third largest democracy in the world that advocates equality and legally condemns any type of gender discrimination, it is depressing and disturbing to think that India is one of the thirty-six countries in the world today, that still hasn't criminalized marital rape.

### **Laws for Marital Rape in other countries:**

Marital rape or forced sex in a marriage is a crime in almost 150 countries like the United States of America, United Kingdom, South Africa and Nepal.

In many other countries like Iraq and Malaysia, there have been movements in order to get the 'marry your rapist law' abolished. Back in 2017, countries like Jordan, Tunisia and Lebanon abolished similar laws.

Most of the countries in both the North and South America, Europe, Australia and many countries in Africa and Asia have criminalized marital rape.

### **Laws regarding Marital Rape in India:**

In India, rape is not about the physical abuse, sexual violation or mental trauma that the victim has to suffer; rather it is about how the rape has snatched the victim's honor from her, indirectly dishonoring her family and their status. The traditional beliefs are that a woman belongs to her husband after marriage; so the question arises whether sex forced by a husband could really be considered as rape? With such a patriarchal mindset it does not come as a surprise when rape within the horizons of marriage is not considered a crime in India.

Section 375 of the Indian Penal Code criminalizes rape, but the second exception to this section clearly excludes marital rape.

Exception II of Sect.375 states that "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape"

The Chattisgarh High Court on 23<sup>rd</sup> August 2021, discharged a man charged under Sect.376 of the Indian Penal Code stating the exception II under Sect. 375. The man and his two relatives were trying to seek an appeal in the High Court against the charges framed by a trial court. The applicant's legally wedded wife lodged a complaint at a police station and after investigation the applicant and two other relatives were charged with rape under Sect.376 IPC, Sect. 377 (unnatural offences), Sect.34 (common intention) and dowry harassment under Sect.498-A, IPC.

Even though the man (applicant) was charged by the Chattisgarh High Court under Sect.377, Sect.498-A and Sect.34, the court claimed that the charge of Sect.376 (rape) was illegal and erroneous. The court stated that according to exception II of the Section 375 of the IPC, sexual intercourse or activity by a man with his own wife is not rape, given that the wife is

not a minor. In the aforementioned case, the offence would not constitute as rape since the complainant is the legally wedded wife of applicant No.1 and any sexual activity with her is not a crime, even if it goes against her wishes.

To cite another similar case, the Supreme Court in *Arnesh Kumar v. State of Bihar*, held that if marital rape is criminalised then there will be a collapse in social and family systems.

Besides the obvious torture, harassment and assault the woman has to go through in such a situation, marital rape also invades her right to live life with dignity under the ambit of Article 21 of the Fundamental Rights granted to every individual by the Constitution of India. Article 21 states that every individual has the right to live in a healthy, safe environment with respect, dignity and privacy.

Contrary to that, the Kerala High Court ruled that marital rape is a valid ground for divorce. A division bench in the Kerala High Court dismissed a plea by a man who was challenging a family court's order that granted divorce to his wife on the grounds of cruelty. The woman stated in her complaint that aside from harassment and torture by her husband she was also forced to have sex with him on various occasions like when she was sick, bedridden and even on the day her mother died.

The Bench claimed that sex is the direct reflection of the intimacy amongst the spouses in their married life. The evidence provided by the victim proved that she was made to suffer through all sorts of perversion without her consent. When the husband is under the delusion that his wife's body belongs to him, cases of marital rape occur.

The High Court also said that the "insatiable urge of wealth and sex" of a spouse also amounted to cruelty.

Though not clearly stated as 'marital rape', the Protection of Women from Domestic Violence Act, 2005 provides that any form of sexual abuse that includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman is punishable by law.

**Conclusion:**

It is a long battle ahead for women to even get marital rape to be recognised as a crime. But the judgement by the Kerala High Court is monumental in giving recognition to the torture a woman must go through in the hands of her husband, in cases of compulsive spousal violence and rape. It gives several women across the country hope and courage to stand up to the violence unfairly meted out on them over time, under the guise of love and traditions.

It is imperative for all women to understand that their bodies are not the property of anyone but them and no man, be it their father, brother, husband or any close male relative or acquaintance has any right to tell them how to live their life and what to do with their bodies.

As a modern 21<sup>st</sup> century society, it is the responsibility of educated individuals to make the unaware aware and in their own small way try to empower other women and encourage them to stand up for their rights, their self-respect and their own safety and privacy.

Until the legislatures and courts strictly implement laws regarding women's rights and safety in marriage, spousal violence and marital rape are going to be common crimes in the society. It is important as a society that we protect women from the crimes that are committed on them within the boundaries of their four walls, hidden from the world.

## References:

Article 21, The Constitution of India 1950

The Indian Penal Code, 1860, Section 375

The Protection of Women from Domestic Violence Act, 2005, Section 3(d)(ii) (India)

Arnesh Kumar v. State of Bihar (2014), 8 Scc 273

Preeti Choudhary, Marital rape: Marriage can't mean irrevocable implied consent, India Today, Aug. 29, 2021,

<https://www.indiatoday.in/opinion-columns/story/marital-rape-marriage-cannot-mean-irrevocable-implied-consent-1846631-2021-08-29>

Mythree Ramesh, Indian Men Can 'Lawfully' Rape Their Wives: When Will That Change?, The Quint, Mar. 08, 2021,

<https://www.thequint.com/neon/gender/marital-rape-laws-in-india-criminal-acts-against-women#read-more>

Express Web Desk, 'Sexual intercourse by husband not rape, even if by force': Chhattisgarh HC, Indian Express, Aug. 26, 2021,

<https://indianexpress.com/article/india/marital-rape-chhattisgarh-hc-section-377-7471940/>

PS Gopalakrishnan Unnithan, Kerala High Court: Marital rape sufficient ground to claim divorce, India Today, Aug. 06, 2021,

<https://www.indiatoday.in/india/story/kerala-high-court-marital-rape-sufficient-ground-to-claim-divorce-1837841-2021-08-06>

Ellen Wulforst, UN Urges Countries to End Marital Rape and Close Legal Loopholes, (June. 26, 2019)

<https://www.globalcitizen.org/en/content/un-women-marital-rape-laws/>