



# THE UNWITNESSED AND SILENCED CRIME BEHIND MARRIAGE: AN UNTOLD CHAPTER

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## ABSTRACT-

In today's scenario the integrity of a woman is brutally disturbed by any kind of Sexual Act which was occurred with her in the past. After the most censorious Nirbhaya case in 2013, rape laws came into serious consideration which looked after the loopholes in the law and amended on the recommendation of the Justice J.S.Verma Committee report, but moreover till date marital rape is not yet prohibited neither criminalized in India, as it is very much presumed by the people with whom we all our surrounded that in a marriage we have implied consent by both partners. But, reality speaks an untold story in itself.

Marriage could be a state of being united to someone of the other sex as husband or a mate in a very accordant and written agreement relationship recognized by law. It's thought-about as a sacred thread that binds two people in a very time period of intimacy.

The term rape in itself is associated as an offence against the woman, violating all her dignity, living, pride, peace and once it goes inside the four-walls of a married dome, it reduces the woman to the stature of associate piece used just for sexual quenching. There's a undeviating demand for a absolute law on marital/nuptial rape in India, that ought to be at par with the undertaken cosmopolitan predicts on this issue.

It is very well said that rape is a rape, even if it is between husband and wife. Marital rape is a sexual intercourse without the consent where the perpetrator is victim's spouse. Today amongst the developed nations it has been criminalized as it is simply violates the fundamental right of a woman. However, yet in India, Marital Rape has its own story filed with many obstacles, barriers and key mindset which still has very well made India not to criminalize it in our society.

Nuptial abduction is a very grave and communal affair that we must always got to grant as shortly as practicable so no more such peccadillo came about any sexual pursuit between husband and adult female while not wife's consent is termed marital status rape.

**Keywords:** *Marital Rape, Violence, Women Laws, Judicial, Marriage, Marital Laws*

Sexual violence in marriage has been a part of the institution of marriage since the conceptualization of the institution itself.

The institution of marriage has always been taken as license to legal sex<sup>1</sup>. There are certain circumstances in marriage, when the wife is subjected to sexual intercourse cloaked as being her duty. However, despite being socially approved, the question as to consent still remains shrouded in mystery, especially when the sexual intercourse is being performed under social obligations and not something that she consents to<sup>2</sup>.

The husband generally sees sex as a solution to all matrimonial problems as well as the source of validation for masculine identity- this might also lead to problem of toxic masculinity in society. The individuality of women is lost in social pressure. Stereotypes mislead men into believing, that they should ignore a woman's cry for protest. These stereotypes also mislead women into believing that they are bad wives for not enjoying sexual encounters or that they are bad wives for not enjoying sex against their will.

This sexual act includes intercourse, anal or oral, forced sexual behaviour with the other spouse, which is considered by the victim as degrading, humiliating, painful and unwanted- this is known as spousal rape. The act has always been proven as a non-consensual activity which often prevents to the violent perversion by the husband against her wife where she is not only physically but also sexually and mentally abused. In today's society with a different mindset of people around us the percentage of women who are daily experiencing the sexual violence by their very own beloved partner at least once in their lifetime or even less, stands around 60-67% in Asia itself. The situation in the developed countries relatively fair better with North America at 20-30% and Europe at 20-40%<sup>3</sup>.

In other countries marital rape has been criminalized or the judiciary has been playing an active role in recognizing it as an offence<sup>4</sup>, in India however, the judiciary seems to be unsure how marital rape will be perceived, given the diversity of patriarchy in India.

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<sup>1</sup> Sakshi Singh, *Marital Rape: No Means No Even After Marriage*, LEGAL SERVICE INDIA, <http://www.legalserviceindia.com/legal/article-3295-marital-rape-no-means-no-even-after-marriage.html>

<sup>2</sup> Damini Singh Chauhan, *Whether Sexual Intercourse Based On Promise To Marry Is Rape?*, LEGAL SERVICE INDIA, <http://www.legalserviceindia.com/legal/article-678-whether-sexual-intercourse-based-on-promise-to-marry-is-rape-.html>

<sup>3</sup> Demographic and Social Statistics, UN Statistics Division, <https://unstats.un.org/unsd/demographic-social/gender/index.cshtml>

<sup>4</sup> Diganth Raj Sehgal, *All You Need To Know About Marital Rape*, IPLEADERS (AUG 9 2020), <https://blog.ipleaders.in/need-know-marital-rape/>

In *Bodhisattwa Gautam vs. Subhra Chakraborty*<sup>5</sup>, the Supreme Court held that, rape is a crime against basic human rights namely, the right to life enshrined in Article 21 of the Indian Constitution. Yet, it negates the very guarantee by not recognizing marital rape. Despite the developments in women rights, it has mainly been confined to physical rather sexual abuse.

In *State of Maharashtra vs. Madhkar Narayan*<sup>6</sup> the Supreme Court held that every woman is entitled to her sexual privacy and it is not open for any and every person to violate her privacy as and when he wished. In *Vishakha vs. State of Rajasthan*<sup>7</sup> the Court extended the right of privacy in working environments also. Further, along a similar line we can translate that, there exists a right of privacy to go into a sexual relationship even in a marriage. Subsequently, decriminalizing rape in a marriage, the marital exception teaching, damages this right of privacy of a wedded lady and is consequently illegal.

The Judiciary's stance on criminalizing spousal rape has only been minuscule so far because it can only interpret laws and not enact them. The lawmakers of the nation are duty bound to introduce laws in consonance with whatever ails the society. Marriage in India is a holy sacrament where the wife submits herself as a devotee to her husband. The social conditioning is such that the government has failed to enact a law protecting married women where the sexual predator is the husband himself. In India, only two groups of married women are protected under the rape laws, namely- those being under 15<sup>8</sup> years and those who are separated from their husbands<sup>9</sup>.

Not only does the Indian law therefore condone statutory rape, it also doesn't recognize the very possibility of rape in a marriage.

According to National Family Health Survey (2015-16), 31% of married women experienced sexual violence in India. Among ever-married women aged 15-49, who have ever experienced sexual violence, 83% reported their current husband and 9% reported their former husbands as perpetrators<sup>10</sup>.

Justice Pardiwala of the Gujarat High Court opined- "A law that does not give married and unmarried women equal protection creates conditions that lead to the marital rape. Where the orthodox environment allows a very diplomatic view where the men and women are being believed that the rape to the wife is very much acceptable and it does not attract the concern of the law makers. And to observe the instance where the fact of making the rape on wife illegal or an offence will surely remove the destructive attitudes that promote the marital rape not only physically but even mentally bound under the pressure of the society and family boundaries. With over 100's of instances it raises a moral limitation that not only allows the society that even a punishment results if the borderline is fall from grace. Today the most imperative demand of the women is the statutory abolition of the marital rape in making a step forward

<sup>5</sup> *Bodhisattwa Gautam vs. Subhra Chakraborty*, 1996 AIR 922

<sup>6</sup> *State of Maharashtra vs. Madhkar Narayan*, AIR 1997 SC 207

<sup>7</sup> *Vishakha vs. State of Rajasthan*, AIR 1997 SC 3011

<sup>8</sup> Exception 2 to Section 375, IPC

<sup>9</sup> Section 376-A, IPC

<sup>10</sup> *National Family Health Survey (NFHS-4) 2015-16*, Ministry of Health & Family Welfare (December 2017), <http://rchiips.org/nfhs/nfhs-4Reports/India.pdf>

towards making new phase of teaching<sup>11</sup> in the societies that dehumanized treatment of women will not be tolerated anymore and that the marital rape is not a husband's privilege, but rather a violent act and an injustice that must be criminalized<sup>12</sup>.”

Although a small voice, but the winds of change have definitely picked up in the Indian society. Mr. Shashi Tharoor, has championed the cause of marital rape in India by introducing 'The Women's Sexual, Reproductive and Menstrual Rights Bill' in 2018. If the Bill sees the light of the day in both the Houses of Parliament, it will take away the exception given to men in section 375, IPC- which does not penalize the man, if the sexual intercourse is committed with his own wife who is above 15 years of age. The Bill said- "The autonomy of the woman must be rightfully restored to her by granting her the agency over her sexual and reproductive rights<sup>13</sup>. For this, marital rape should be criminalized to eliminate the loss of woman's sexual independence, post marriage.”

The introduction of marital rape laws does not necessitate acceptance of the same in the society. It will take a lot for married women to report as the taboo attached with women being recusant in their marriage will not be easy to surmount. The right to live with human dignity as enshrined in Article 21 of the Indian Constitution, is a verse to the very idea of spousal rape in a marriage. This not only dampens her self-worth, as the one person that she entrusts her life to becomes her worst nightmare but also degrades her to a second-class citizen.

In the case of *B. Gautam v. Subhrachakraborty*<sup>14</sup>, the Honourable Supreme Court of India held that the "Rape is a crime against basic human rights and a violation of the victims most cherished of fundamental rights, namely, the right to life enriched in Article-21 of the Indian constitution". But you will be amazed to know that still the present criminal law has completely neglected this said judgment by not criminalizing marital rape.

Marital bonds are considered inviolable in India and marriages in India don't thrive on sex. These are some hard hitting realities of this modern times during which marital bond isn't as sacred because it is taken into account to be.

It can be very well concluded that awareness among all the women of our society has to take a stand against marital rape. Women empowerment and education for women are the pillars of support and strength which will make us stand against such heinous and disruptive crime which is in an ongoing condition in our society. When we are talking about right to live with dignity, then we need to even make a step forward and stand bold enough with our knowledge and education to pledge for it as our fundamental right and marriage shouldn't be an excuse for any such an inhumane act or activity against

<sup>11</sup> Anirudh Pratap Singh, *The Impunity of Marital Rape*, THE INDIAN EXPRESS (December 20, 2020 10:37:09 pm), <https://indianexpress.com/article/opinion/columns/the-impunity-of-marital-rape/>

<sup>12</sup> *Marital Rape Is Not A Husband's Privilege But A Violent Act And An Injustice That Must Be Criminalized: Gujarat HC*, Live Law (April 8 2018 11:35 AM), <https://www.livelaw.in/marital-rape-not-husbands-privilege-violent-act-injustice-must-criminalized-gujarat-hc-read-judgment/>

<sup>13</sup> Shemin Joy, *Make Marital Rape a Crime: Tharoor's Bill in Parliament*, DECCAN HERALD (JAN 01 2019, 14:40), <https://www.deccanherald.com/national/make-marital-rape-a-crime-tharoors-bill-in-parliament-710844.html>

<sup>14</sup> *B. Gautam v. Subhrachakraborty*, 1996 AIR 922

any women in any part of this world. All these rising voice against this inhumane and injustice being faced by the women is the need of hour and cannot be simply heard as an untold chapter of one's life. Hence law making bodies should amend and save woman's victimization of marital rape.

