

CONSENT: RECOGNITION OF MARITAL RAPE

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Abstract:“Consent” a word that fades away with women in India when she gets married. A girl from her childhood is consistently monitored and instructed by her family, she is made like a trained animal who doesn't know anything else other than what she is told, and then one day she is married, a person who is told for her entire life that her husband is not a man but an equivalent of god, man who provides for her, can have her as he wants and whenever he wants, “consent” here doesn't matter. Our country where talking about sex is taboo is booming with population, why? Because Women don't have right to choose when to have sex, the law doesn't recognize their dignity, but our country speaks about equal rights of women, it sounds contradictory because right to equality shall mean equal right on body. Rape is an unlawful sexual intercourse without “consent” of a women as a result of physical force or threats, or because of fraudulent act of perpetrator. In India rape by a stranger is a penal-offence under section 375 and 376 of IPC but surprisingly, it explicitly excludes marital rape from ambit of conviction. Marital-rape is a concept of sexual intercourse by husband with his wife without her consent or by force or threat. Social-practices and legal codes in India enforces this mentality of man. She has to do everything even mutually enforce the denial of women's sexual agency and bodily integrity, which lie at the heart of women's human rights. Researchers estimate that between 10 and 14 percent of married women experience rape in their marital relationships at least once. Based on findings from the largest study on violence against women in the United States, it is estimated that 7.7 million women have been raped by their intimate partners. When the time is itself urging to change not only through laws but also on grounds of uplifting thoughts of caging the individual human rights of women because for many, rape in marriage is not perceived as “real-rape.”

Keywords: Consent, Marital rape, Sexual intercourse, Conviction, Real rape.

Introduction:“*Happy marriages begin when we marry the ones we love and they blossom when we love the ones we marry*”

The idea of the “sacrosanct” institution of marriage dished out by the mainstream Indian cinema is a myth and is contrary to women's perceptions of reality. Though, **marital rape** is the most common and repugnant form of masochism in Indian society, it is hidden behind the iron curtain of marriage. While India is handling major problems like poverty and terrorism they have intentionally outlook one major violation of human right principle and still doesn't seem to be obedient enough to answer the exception of Rape i.e. Marital rape and removing it from exception umbrella. Marital rape is a serious and prevalent form of intimate violence. The legal definition of marital rape varies from one state to the next; however, marital rape is generally defined as unwanted intercourse or penetration (oral, anal, or vaginal) obtained by force or threat of force or when the wife is unable to give consent. Patriarchal system that governs Indian families has always considered women as mere property of her husband or guardian. So rape was considered as theft of women and wrong against husband or guardian. This ideology has influenced our legislatures in ignoring offence of spouse rape by giving it shield of matrimonial right of the husband and by this they are silently accepting that women are merely an object of sexual gratification of her husband with no will of her own over her sexuality. This perception has subsided

women's right to equality and justice. Marital rape is not an offence in India. Legislations regarding marital rape in India are either non-existent or abstruse and dependant on the interpretation by Courts. Section 375, the provision of rape in the Indian Penal Code (IPC), mentions as its exception clause- “Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape.” According to section 376 of IPC, which provides punishment for rape, the rapist should be punished with imprisonment of either description for a term which shall not be less than 7 years but which may extend to life or for a term extending up to 10 years and shall also be liable to fine unless the woman raped is his own wife, and is not under 12 years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to 2 years with fine or with both. Marital rape is hard to deal with as the perpetrator is someone the woman knows, trusts and loves. Women who are raped by their husbands are likely to be raped many times. They experience not only vaginal rape, but also oral and anal rape. Husbands often rape their wives when they are asleep, or use coercion, verbal threats, physical violence, or weapons to force their wives into having non-consensual sex with them. Despite underreporting, marital rape unquestionably has an enormous impact on the lives of women who experience it. Marital rape generally go unreported due to family loyalty or fear of husband, financial dependence on husband, safeguarding the future of

their children, or because of limited laws that protect the victims of marital rape. Studies claim that approximately 10% to 14% of married women have been subjected to rape or attempted rape by her husband. In this article, authors have attempted to give an insight into the concept of marital rape and arguments in support of making it an offence under the penal laws.

Marital Exception - A license to Rape - Degrading Human Dignity and Right to Life: Historically the act of forcing one's wife to have sex was not defined as "rape" in the United States. Rape was most commonly defined as "the forcible penetration of the body of a woman, not the wife of the perpetrator"

"One is not born, but rather becomes, a woman." - Simone de Beauvoir

These empowering quotes may seem to speak volumes about the status of women in the society (esp. man dominated) but surface reality is upto an entirety opposite. The cultural and societal sanction which put husband on par with god is Hindu religion but not being religion centric because this brutality is on wives irrespective of any religion. The Laws of Manu, India's ancient revered scripture merrily educates women. His dictum that a wife ought to respect her husband as God and serve him faithfully, even if he were vicious and void of any merit, was accepted as applicable to all women.

Article 21, a lot has been said about it after the Hon'ble Supreme Court elaborated its context about life and liberty in the cases following *Maneka Gandhi v. Union of India*, life means something else it's not merely surviving but surviving with dignity, in *Munn v. Illinois*, a U.S. case Justice Field J said that- "...life...something more is meant than mere animal existence...". The author is Quoting this article with sole intention that the term "life and liberty" mentioned in this article are not to be taken as something which is given to the Indian citizen by the constitution but is something that is recognized by it and gradually the recognition is expanding its way to provide the citizen a life with meaning, but somehow the supreme court, our advocates, our parliament or our prestigious government whom we choose every 5 years demanding some change has kept numb upon the issue of "marital rape", yes, it happens, and India cannot be an exception to it, because the preamble itself says that- "We the people..." not we the men. Marital rape is rape within a marriage where the sexual partner does not give consent for intercourse. There was a time when the concept of marital rape and its harshness was ignored and not understood in its full context but it is now a criminalised act in many countries, not only the western countries but our neighbouring countries like Nepal and Bhutan have recognized it in their domestic laws. Marital rape also known as spousal rape is understood as

something that is not possible, as in our country sexual intercourse with the spouse is considered to be a matrimonial right, even though the spouse forces it. This sexual coercion causes many health problems like distress and pain and frustration in the spouses.

Women not only in India but around the world in many countries were treated as property of their guardian, till she is not married she is under the guardianship of her father and once she is married her husband has her. The term "rape" originated from the Latin word "Raptus" which means "to seize" they used this word for acts of theft of property and since, women from that period were considered as property of their father and later of their husband, nothing has changed, It seems that we have not evolved much in the concept of equality of gender, the world society might be patriarchal but we have to understand that women is not a property, she is as much human as men are, she knows herself and can care for herself as men can and she can and should have the right to choose to have or not to have sex with her husband. The Indian penal code, though, recognizes marital rape of women under the age 15 but ignores her dignity afterwards. The exception 2 of section 375 says that "sexual intercourse or sexual acts by a man with his own wife...is not rape". So, whether the term "**consent**" loses its significance when comes to spousal relations so that institutions of arranged marriage can survive which can allow a hollow family suffering from such acts daily shall stand till it collapses principally or in totality. It shall be the duty of every justice system of each country to provide equal right to its citizens, irrespective of their gender. In democracies like India, it shall be a mandatory, where crime against women are so much highlighted and many actions are suggested to curb them but hypocrisy survives when marital rape comes in the picture.

Why there is an opposition to criminalize Marital Rape?: While we have noticed many of countries criminalising the exception to rape but still India is

falling back in deciding or coming to a better conclusion for the wives settling with their husbands in India or we can say justifying the Article 14 of Indian constitution exhaustively. Supreme Court of India said that rape is an offence against basic human rights and snatching victim's most cherished fundamental rights i.e. Article 21 of Indian Constitution. There have been law commission reports which have suggested government to retract exception but still there is hollow chamber over this issue, The 42nd Law commission Report (1972) suggested that marital rape should be criminalised however actions were not taken place as the 84th report (1980) was not in favour of the criminalisation. The issue was again taken up by the

Law Commission of India in 2000 but the efforts were inconclusive.

There have been not many significant developments over the period of time but in 2012, as an aftermath of the Delhi gang rape case of 2012, *Justice Verma Committee* was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women.

The Committee submitted its report on January 23, 2013 and gave the following views regarding marital rape:-

"The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant."

Conclusion: Every citizen of India is a Proud Indian and is happily living and serving in his country. We whenever see a news on atrocities happening on women in India, get disturbed, frustrated, and every one with a rightful soul wants to do something to prevent such crimes whether it is dowry, acid-attack or rape etc. We take many steps to curb or to prevent such crimes from happening, like we restrict them (women) when we worry about their safety. Many NGOs' are working for women who have suffered such atrocities for the betterment of them and their

life. But somehow it's not reaching a peak of satisfaction the work seems that it is not enough. This is the time when we need to ask, why? Because in our roots we have embedded those atrocities, we are working on surface of it but the problem is there in the roots, a husband shall respect her women no matter the marriage is arranged or a love marriage. Being married to that women doesn't give you the right to you to force yourself on her, once crimes like marital rape in India will be criminalised it will give an feel of equality for women in the masses, they won't then feel that "*haqbantahai*" instead they will respect her and give her choices a priority. The sense of superiority won't be there with the parents of the man to ask for dowry because such enactments will slice it out swiftly, when they will see that the country not only honours and prays to Durga but its legislations are treating every women in this country as Durga, Men won't be able to throw acid on her if she refuses silly things or rape her on account of their urge, because in their home they will see that their fathers respect the choices of their mothers. Everything starts with family the attributes of happiness or hate, reasoning marital rape non-criminal act for the sake of survival of marriages won't lead to a better society. We need to kill this sense of superiority so that the adrenaline rush to do such crimes never emerges, reasoning excuses such as overburdening of courts with cases is not the answer, we are in a democratic country we choose our government to do the right thing they can't sway away by citing such hypocritical reason, if we need more courts we should not hesitate in creating an upgraded judicial system for administration of justice, so to create a better, just and equal society a better country to live in.

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