

## THINGS I DO FOR LOVE: THE FILTHIEST NORM OF MARRIAGE

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### ABSTRACT

*Marital Rape is not a crime. It's completely normal. Because it's a man's right to have sex with his wife. Because that's what marriages are for. First let's clear one thing that this paper is supporting those women who despite of having children are getting raped by their husbands. This brings in the question that when the couple do have kids then why the women would resist from sexual favors that compels the husband to forcefully have sex with his wife. Home Affairs minister Haribhai Chaudhary had said that marital rape can't be made a criminal offence in India because of high illiteracy rate, poverty, extreme religious beliefs and the very 'sanctity' of marriage. It should not be about our society's view it should be about what's wrong and what's right. If the law finds it to be wrong then it is wrong. There was once a time when society thought that educating a girl child is of no good use and that time explaining this to our illiterate society that educating a girl is equally important as it is to educate a boy child was an impossible task. But the society changed according to the law. The law ordered that it is compulsory to educate the girl child and the society accepted it as a law irrespective of the fact of illiterate or literate. The women's organizations believe that a legal provision will influence the husband's behavior to some extent and restrain him from cruel sexual action. Priya Nanda group director of social and economic development at the ICRW (International Centre for Research on Women) had told a leading portal "the reason men do not want to criminalize marital rape is because they do not want to give the women power to say no".*

**Keywords:** Marital Rape, Sexual Offences, Male dominance etc.

### INTRODUCTION

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Why women are considered as an object or a property? Not only by men but by law too. What kind of shenanigans our society is trying to show to our women about equality when even her 'no' is to be questioned twice that whether it's actually a no or deep within she wants the same? Or whether she has the right to say no to her so called another half who vowed to protect her in front of the society at large. The sole purpose of ethics in India is to control women. Whether it is when she's in her father's home or when she's married. 'Ethics' the word is praised and sung by all but has to be followed mostly by women. The crown of good wives has to be earned by the women. The house maker has to compromise with her partner when it comes to pleasures that are meant to be enjoyed by both. Supreme Court declined the plea of criminalizing Marital Rape saying that it was for a 'personal cause and not a public cause.' How come vandalizing a woman's privacy, her opinion and her right to freedom is a personal cause. The Hindu interviewed a female executive from Delhi who told the court that she was suffering from repeated sexual violence from her husband but she could not report it as a crime as the law books do not view it as one. Kavita Krishnan<sup>1</sup> said that one of the studies where the male respondents from 8 states were asked whether they have ever forced their partners in their marriage into unwanted sex and more than 50% of the men said 'yes they have'. As we know that there is a high number of domestic violence in India this proves that if a woman is abused physically in her marriage chances are high that she would have been abused sexually. Another disturbing thing about the reasoning given by our legal superiors is that it explains marriage to be sacred act and hence should not be debauched by such happenings shows the real face of equality before law. The law is concerned about the husband as pronouncing him guilty of rape would be a heinous crime in the society of the sacred marriage custom as said by many famous politicians and lawyers.

## **NO ACTUALLY MEANS NO**

The word no which she says to her husband has no value in the eyes of law. This can clearly show that why India tops the list when it comes to countries which are not safe for women. When the country doesn't give right to the wife the other half of the "sacred marriage" to say no and in some cases ignored even if she raised her voice. How would the girls and women be

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<sup>1</sup>Indian Social Activist.

safe in India? The word no if said by any other gender than man is to be reconsidered. Whether it is the issue of Same Sex Marriages where the people who want to live it are covered up by the shroud of ethics in India or whether it is the women who is said to be equal to men but doesn't even has the right to take decisions regarding her own body when it comes to:-

- i) Commercial Surrogacy
- ii) Legalized prostitution
- iii) Sex Before Marriages
- iv) Abortion
- v) When she wants a child or not.
- vi) What kinds of clothes to wear. Etc

These examples show that how double faced and confused our society is. Criminalizing marital rape will surely not give 100% protection to the women but at least by doing so a crime can be brought pot in the light and can be explained to the society that it is not just any another marriage norm this is insaneness.

### **MARITAL RAPE'S CONNECTION WITH BATTERED WOMEN SYNDROME (BWS)**

Marital Rape is interlinked with Battered Women Syndrome as the women having this syndrome are actually assaulted by their husband physically and of course sexually. The forced act of having sex while abusing the wife physically done by the husband is called marital rape. And the mental condition of women when she suffers such act of her husband is called Battered Women Syndrome.

- i) Some studies that have gathered data on the sexual assault of women by their husbands or intimate partners have relied on convenience samples, including women seeking help for "relationship problems" and battered women who are seeking help, living in shelters, or who have answered advertisements. Although such studies clearly do not allow generalization to the total population of married women, they do provide insight into the prevalence of sexual assault among battered

women and women experiencing other difficulties in their heterosexual relationships.

- ii) The incidence of sexual assault reported by battered or help-seeking women is much higher than that found in the general population. Of women seeking relationship maintenance, counseling, or assistance, between 20-30% have reported at least one forced sexual assault by a partner.
- iii) This is two to three times the rate of wife rape experienced by all ever-married women. The incidence of sexual assault among battered women has been assessed by many studies, most of which report that at least half and as many as 70% of all battered women have been sexually assaulted by their partners. This is a rate five to seven times high than that reported by ever-married women.
- iv) One woman interviewed by Finkelhor and Yllo (1985) was physically assaulted (punched in the face) by her husband routinely, and her husband demanded sex three times a day. If she did not comply, he would hit her, demean her verbally, or throw her out of the house. He forced her to have sex four times in front of their child. One day he threatened to "rip out her vagina" with a pair of pliers. The woman recounted these experiences to the interviewer, yet when asked if she had ever been raped, she replied "no."

## **WHAT THE INDIAN SOCIETY THINKS ABOUT MARITAL RAPE**

- 1) India has failed to criminalize or even recognize the social evil of marital rape that continues to plague society, the central government-appointed Pam Rajput committee. The committee said that they came down heavily on the Criminal Laws (Amendment) Act 2013 for keeping marital rape out of its ambit.
- 2) The Verma committee had, however, recommended that marital rape should be made an offence irrespective of the age of the wife. This shows the legislature's failure to appreciate the growing menace of this crime wherein the victim has to suffer on a daily basis," it observed. The Justice Verma committee was formed after the gang-rape and murder of a student in Delhi in December 2012. The Act was passed on the basis of the

recommendations submitted by the panel, though the suggestions on marital rape were ignored.

- 3) Anuja Shah, online senior family therapist at ePsyClinic, explains, “Once married, men think that any sort of sex he indulges in with the wife is normal. He believes that even if he forces his wife to have sex, it cannot be called rape. And most often I have observed that in such cases, there is some sort of existing torture or physical abuse in the marriage”
- 4) India Law Journal It is both sad and disturbing that a country, where the legal age of marriage for women is 18, can so easily overlook the Sexual assault on 16-year-olds. In India, the wife, and women in general, are thought to be docile, submissive, weak creatures. The husband can use her however he pleases, for both physical and mental pleasures. A country where marriage is thought to be the most sacred of vows, this ignorant and dismissive attitude towards the most heinous of crimes is pathetic. Today’s feminism is so busy with equality in the cities, that it easily forgets the abuses in the depths of the country. Marital rape is not just abuse or assault, it’s a betrayal of the trust placed in a man by the woman who is said to be his “better” half.
- 5) **Government thinks that marital rape is not applicable to Indian society. But Sharmistha Ghosal begs to differ** The girl from Barrackpore was just 19 when she was married. The marriage didn’t last long — within 10 months, she’d returned home, traumatised by her husband’s constant demand for sex. Literally raped on the first night of the marriage, she was pressured to have sex in various ways more than twice every day.
- 6) Kanimozhi in Parliament cited a UN report which said that 75 per cent of women in India were raped in marriages.
- 7) “Marital rape continues to be a specific exception in the Indian Penal Code (IPC) though it’s unconstitutional. Even the Criminal Law Act amendment in 2013 speaks of rights to a woman’s bodily integrity, dignity and sexual autonomy,” says Supreme Court lawyer Vrinda Grover, who specializes in domestic violence and human rights.

First of all let's be clear that criminalization of marital rape is a remedy for women who:

- i) Despite of having two sons is raped continuously by her husband: *R v Ahluwalia*<sup>2</sup>
- ii) Another case is of a woman who was raped by her husband the day after undergoing gynecological surgery, which causes her to hemorrhage and return to the hospital.<sup>3</sup>
- iii) Another woman is forced to have sex at knifepoint by her estranged husband.<sup>4</sup>

The main reason because of which the Indian society is not criminalizing marital rape is:

- a) Firstly- that it is very difficult to prove that whether it was rape or normal coitus because in many cases the husband says that his wife “wanted him to get rough on her”. This statement entirely changes the conditions of rape and is absolutely correct. But what if the wife is able to prove that she didn't asked any of such things and her husband actually raped her. Where will these kinds of cases go? Usually it goes under the Domestic Violence Act, section 498A of the Indian Penal Code etc. but does any of such sections and acts actually are talking about the remedies and details of such crimes? This situation is similar to various other kinds of crime in India where the law is still on progress or is completely silent as to what remedy should be provided and how the criminal or the offender should be punished. For example if a cyber crime is happened regarding the use of Facebook or Whatsapp or any other social media. There is no Indian Law that has any remedy regarding such crimes. The only remedy is the IT Act. And the irony is that though the mighty IT Act is the All-rounder and the ultimate remedy for all cyber problems but is silent about the use of Facebook and Whatsapp and nowhere mentions as to how crimes relating to these areas should be managed. Same is the case with marital rape.
- b) Secondly- the main issue is that if “marital rape is criminalized it will ruin the sanctity of marriage”. This reasoning itself proves that though marital rape do happen and are 100% real but cannot be criminalized as it will pollute the sanctity of marriage. Again the burden of ethics is to taken by women alone. And if the victim keeps her mouth shut and accepts everything which is happening to her as a faith and a norm of marriage life

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<sup>2</sup> (1993) 96 Cr App R 133

<sup>3</sup> David Finkelhor and Kersti Yllo, License to Rape: Sexual Abuse of Wives. (1985).

<sup>4</sup> Id.

will the marriage will still remain pure? What about the marriages that are forced? Not the arrange marriages but the ones where the bride is smuggled from other states of the countries and bought to get married to unknown men. Haryana the temple of such so called brave acts. What if the husbands in any of such marriage have sex with his forcefully wedded wife? Is this marriage even a marriage? The Indian Law itself says that Marriage should be with the consent of both the parties and the consent should be free. But if these women go to police station and try to report a crime they are backstabbed by the policemen. In some cases they inform the girls forced husbands that their wives are here and to come and take them away and in some cases they say cruel things like “he is your husband now he has every right to do this” and shush her out. Criminalizing Marital Rape will be a remedy for such women.

### **PYSCHOLOGY OF SOME HUSBANDS AS EXPLAINED IN THE FAMOUS BOOK LICENCE TO RAPE: SEXUAL ABUSE OF WIVES**

This book is written by David Finkelhor and Kersti Yllo where they have interview various husbands who have raped their own wives. And the confessions made by them hardly show anything relating to cohabitation, satisfaction of needs or love. Here are some of the confessions:

- i) *I was damn sure I didn't want any more children, but I remember just being angry enough that I decided, "I'm going to take the risk anyway. (Finkelhor & Yllo, 1985, p. 73)*
- ii) *I guess I was angry at her. It was a way of getting even. (Finkelhor & Yllo, 1985, p.80)*
- iii) *You could say, I suppose, that I raped her. But I was reduced to a situation in the marriage where it was absolutely the only power I had over her. (Finkelhor & Yllo, 1985, p. 66)*

Well these confessions from husbands prove that their pure intention was to sexually abuse their wives as they themselves confessed. All of the men described feelings of emasculation and powerlessness in their relationships. Each expressed feeling that he was not appreciated by his wife for the hard work he put into earning income or other relationship tasks. Sex was seen



as an entitlement by some, and forced sex was used as a weapon - "one of the only ways I could best her." (Finkelhor & Yllo, 1985). These men had trouble managing the anger in their lives and used sexual assaults against their wives as an outlet.

## CONSTITUTION OF INDIA Vis-à-vis MARITAL RAPE

- 1) As per the Indian constitution, every law that is passed in the country has to be in conformation with the principles and ideas enshrined in the Constitution of India. Any law that fails to meet this standard is considered *ultra vires* and is liable to be struck down by the Courts and declared unconstitutional. Now it will be seen as to how the doctrine of marital exemption to rape fails to meet the standard of conformity with the provisions of Article 14 and Article 21 of the Constitution of India.
- 2) Men still consider women their private property and the wives let themselves be crushed under this social mindset. Such marital rape exception is clear violation of women's right to personal liberty, equality and bodily integrity guaranteed by the Constitution of India. The meaning of the words 'personal liberty' came up for consideration of the Supreme Court for the first time in *A.K. Gopalan v. Union of India*<sup>5</sup> wherein it was held that the 'personal liberty' in article 21 means nothing more than the liberty of the physical body i.e. freedom from arrest and detention without the authority of law.
- 3) The judicial interpretations have expanded the scope of Article 21 by leaps and bounds and held that right to live is not merely confined to physical existence but includes within its ambit the 'right to live with human dignity'.<sup>6</sup>
- 4) In *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>7</sup> the Supreme Court described rape as most hated crime and held that "rape is a crime against basic human rights and a violation of the victim's" most cherished of fundamental rights, namely, the right to life enshrined in Article 21 of the Constitution.

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<sup>5</sup> AIR 1950 SC 27

<sup>6</sup> Francis Coralie v. Administrator, Union Territory of Delhi, AIR 1981 SC 746; State of Maharashtra v. Chandrabhan, AIR 1983 SC 803

<sup>7</sup> AIR 1996 SC 922



- 5) In case of *The Chairman, Railway Board v. Chandrima Das*<sup>8</sup> Supreme Court again held that the offence of rape with any women violates her right to life and her right to live with human dignity as she is the victim of rape.

***Marital Rape and Right to Privacy and Bodily Integrity:***

There is also no concept of “Right to privacy” in Constitution of India but the Supreme Court in its enumerable decisions recognized the right to privacy as a fundamental right protected under article 21 of the constitution of India. Eliza Duffey, a 19th Century insisted that ‘upon the right to self’ is based all the happiness that can possibly be found in marriage state. The wife’s body is unqualifiedly her own and she is not bound to yield her body until she feels that she can do so with the full tide of willingness and affection.<sup>9</sup>

***In State of Maharashtra v. Madhkar Narayan*<sup>10</sup>**

Supreme Court held that every woman was entitled to sexual privacy and it was not open to for any and every person to violate her privacy as an when he wished or pleased. There is no implied consent to sexual relations upon whims and fancies of the husband. The right to sexual intercourse is not a husband’s inherent right in marriage, for such a right defeats the very concept of equality and human dignity.

***In a landmark judgment in Suchita Srivastava v. Chandigarh Administration,*<sup>11</sup>**

The Supreme Court held that There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. In view of this woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods.

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<sup>8</sup> AIR 2000 SC 988

<sup>9</sup> From, At Odds, Carl N Degler (Women and the Family in America from revolution to the present)

<sup>10</sup> AIR 1991 SC 207

<sup>11</sup> AIR 2010 SC 235

The US Supreme Court also took the same stand and held that “the marital couple is not an independent entity with a mind and a heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the individual married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person”.<sup>12</sup>

***Marital Rape and Right to Equality:***

- 1) Article 14 of the Constitution guarantees the fundamental right that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Article 14 therefore protects a person from State discrimination. The non-criminalization of marital rape goes against this fundamental right, by legally differentiating between women who have been raped on the basis of marital relation between the victim and abuser.
- 2) Right to equality also stipulates that express consent should be given by both the partners, whether they are married or not. However the principle of implied consent in a marriage bestows on man the legal license to use and control his wife’s body to satisfy his whims and therefore against the principle of equality guaranteed by article 14 of the Constitution.

***Marital Rape and International Legal Framework:***

- 1) The Universal declaration of Human Rights, adopted by the United Nation General Assembly in 1948, claims that all human beings are born free and equal in dignity and rights.<sup>13</sup>
- 2) It also recognizes that violence against women is the manifestation of historically unequal power relations between men and women, which had led to dominion over discrimination against women by men.<sup>14</sup>

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<sup>12</sup> Eisenstadt v Baird, 405 US 438, 31 L Ed 2d 349, 92 S Ct 1092

<sup>13</sup> Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

<sup>14</sup> Article 2: violence against women shall be understood to encompass, but not be limited to:

- 3) The Supreme Court has held that The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those rights in construing domestic law.<sup>15</sup>

## **WHY IS IT NECESSARY TO CRIMINALIZE MARITAL RAPE**

Marital Rape Exemption in section 375 is an eloquent reminder of the lowly status given to women in our society, almost akin to chattel. Why else would a crime of rape by a man against his own wife not be an offence? If rape is the violation of human rights then it is equally a violation whether committed by her husband or stranger. The need for criminalization of marital rape and amendment of age of consent can be accessed from the incident of tragic death of a Bengali minor girl Phulmonee Dassee who died on the bed of her husband. The girl was found on her husband Hurree Mohun's bed bathed in blood, with Huree Mohun standing beside her. Hurree Mohun was charged under section 304, 304A, 325 and 338 of IPC. The medical evidences revealed that the death of girl was caused by a ruptured vagina. But Hari Mohan was acquitted on charges of rape, because the law of rape was not applicable to the case as Phulmonee had attained the age of 10 years. This case served as a catalyst for bringing the legislation in 1892 by which age of consent was increased to 12 years. It was further increased to 13 in 1925 and to 15 in 1949. Since then there is no change and it remains 15 years. Even the present law which raised the age of consent for sexual intercourse between teenagers from 16 to 18 years keeps its eyes close on the issue of child marriage and does not address a situation like Phulmonee's.<sup>16</sup>

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(a) Physical, sexual and psychological violence occurring in the family including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

<sup>15</sup> Vishakha and Ors. V. State of Rajasthan, AIR 1997 SC 3011

<sup>16</sup> Criminal Law(Amendment) Act, 2013, Section 375

## JUDICIAL RESPONSE TO MARITAL RAPE

*“The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife had given herself in kind unto the husband, which she cannot retract.”*<sup>17</sup> 20(Sir Matthew Hale, C.J, in 17th century England)

This established the notion that once married, a women does not have the right to refuse sex with her husband. It seems that the Supreme Court also accepted this notion as in 1992 it held that ‘it is not possible to believe that when a married woman has sex with her husband in the privacy of their bed-room she would suffer abrasions on her body and the vaginal walls.’<sup>18</sup> Such approach of Indian judiciary shows that forced and violent sex in marriage is not possible in the fictional world of law.

**Anguish of the Bandit Queen-** There is also one case of Bandit Queen, which depicts the tragic story of a village girl. Phoolan Devi, was exposed from an early age to the lust and brutality of some men. She was married to a man old enough to be her father. She was beaten and raped by him. This is truly one story that shows the apathy of the existing society.<sup>19</sup>

**Fast Track Court New Delhi-** Most recently A Special Fast Track Court in New Delhi has ruled that intercourse between husband and wife, even if forcible, is not rape and no culpability can be fastened upon the accused. The woman had alleged that the accused named Vikash sedated her and took her to the office of the registrar of marriages in Ghaziabad in an intoxicated state. He got the marriage documents signed by her on March 4, 2013. Later, Vikash raped her and then abandoned her.<sup>20</sup> “

## SOLUTIONS

Marital rape should be recognized by Parliament as an offence under the Indian Penal Code. The punishment for marital rape should be the same as the one prescribed for rape under

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<sup>17</sup> 1 Hale, History of the Pleas of the Crown 629 (1778)

<sup>18</sup> State of Rajasthan v. Shri Nmarayan, AIR 1992 SC 2004

<sup>19</sup> The parable of Phoolan Devi) The Hindu, <http://www.thehindu.com>

<sup>20</sup> State v. Vikash SC No.1/14

Section 376 of the Indian Penal Code. The fact that the parties are married should not make the sentence lighter. It should not be a defense to the charge that the wife did not fight back and resisted forcefully or screamed and shouted. The wife should have an option of getting a decree of divorce if the charge of marital rape is proved against her husband. Though a case of marital rape may fall under “cruelty” or “rape” as a ground of divorce, it is advisable to have the legal position clarified. Demand for divorce may be an option for the wife, but if the wife does not want to resort to divorce and wants to continue with the marriage then the marriage should be allowed to continue. Corresponding changes in the matrimonial laws should be made.

## CONCLUSION

*A husband whether he has any merit or not, is a very deity*<sup>21</sup> These lines clearly indicate that not just laws, but cultural values of Indian Society are the reason that married women’s autonomy (sexual and otherwise) is routinely rejected and denied. Hinduism is the ONLY religion in the world where the husband is put on par with god. 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.<sup>22</sup> Such traditional orthodox approach of Indian society clearly reflects in a shocking decision of community Panchayat in Rajasthan's Kota district wherein Panchayat, ordered a six-year-old rape survivor to marry her alleged rapist's son on the request of the girl's parents. The 40-year- old neighbour allegedly raped the girl twice, a fortnight ago and again Keshavpura in Kota, 250 km from Jaipur.<sup>23</sup> The reasoning given by Home Minister Haribhai Chaudhary that marital rape can't be made a criminal offence in India because of high illiteracy rate, poverty, extreme religious beliefs and the very 'sanctity' of marriage just gives a wrong example to the society that yes at last women are made to be a minority, should be ignored and should be left to suffer in silence. Even the epic story of Mahabharata supports against sexual abuse of women. The whole concept of Mahabharata is built on the grounds of a woman who was sexually abused i.e. Draupadi. Even our God

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<sup>21</sup> Ayodhya Kanda, 2.62, Ramcharitmanas

<sup>22</sup> U. Niaz, Violence against women in South Asian countries, Archives Women’s Mental Health (2003)

Almighty Lord Krishna himself set an example of protecting a woman despite of the fact that they had to fight with their own family. Nowhere in the Vedas it's written that if a women says no for sex to her husband then her husband has the right to get it forcefully from her. The Vedas does say that it is the duty of the wife to fulfill her husband's every need but it doesn't say that if she is not fulfilling it the husband should take action upon this situation by raping her.

