

**MARTITAL RAPE: A REFORM IN THE NATURE OF THE  
PUNISHMENT. A COMPARATIVE STUDY WITH REFERENCE TO  
INDIA AND U.S.A AND U.K.**

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**ABSTRACT -**

Humanity stands on two pillars, men and women, they should have equal importance and role in its development and growth, but women have always been subjected to a lot of humiliation by man, rape is an appropriate atrocities committed against the dignity of women. The word 'rape' has been primarily derived from the Latin term raptus which literally refers to the act done by one man for damaging or destroying the property of another man. Here, property primarily referred to wife or daughter of another man. The offence of rape is one of the most gruesome and barbarous crimes perpetrated against women. Marital rape though not defined as a crime, in India it is one of the most debatable issue. Women have been treated as an object of pleasure since time immemorial. They have been victims of crimes like rape, sodomy, sexual harassment, female infanticide etc. Rape is a crime due to which women all over the world are suffering. Other countries like U.S.A. and U.K. have tried their best in making laws for the protection of women. India is focusing on protection and prevention of crimes against women but fails to protect a married women from her rapist who is her husband, by not having any legal provisions acknowledging marital rape as a crime. The research paper submits the reason regarding the failure of law in India by not defining marital rape a crime and consequences and also reform in the nature of the punishment of the same.

**INTRODUCTION**

*"I say nothing, not one word, from beginning to end, and neither does he. If it were lawful for a woman to hate her husband. I would hate him as a rapist"*

*- Philippa Gregory*

Violence against women is a manifestation of historic power play struggles between men and women, which has led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanism by which women are forced into a subordinate position compared with men. In India, marriage also called matrimony or wedlock is a socially and legally recognized union between spouses that establishes rights and obligations between them, their children and their in-laws. According to ancient Hindu scriptures no religious rite can be performed with perfection by a man without the participation of his wife. Wives are thus befittingly called 'Ardhangani'. They are supposed to be given not only important but equal position with men. But with reference to recent times it can be noticed that the position of women is deteriorating.

The idea of the 'sacrosanct' institution of marriage portrayed in India is contrary and far from women's perception of reality. Hidden under the iron veil of marriage lies the ugly truth of crimes like marital rape, domestic violence etc. Marital rape is not legally recognized as a crime in India and thus, there is no penalization for the same. Through this research paper, the researcher makes an attempt to denounce the discrimination faced by women with regard to marital rape and the shortcomings of the Indian Judicial System by not conceding marital rape as an offence. The researcher also provide arguments and reasons supporting the need for criminalization of marital rape in India, and further suggest certain legal reforms essential to achieve the desired objectives.

### **MARITAL RAPE - MEANING**

The term 'marital rape', as the name suggests is rape caused to a spouse by her husband. It basically refers to the actual use or threat of use of force by the husband against the wife to compel her into sexual intercourse. This form of rape also known as conjugal rape or wife rape is also said to have taken place when the wife is compelled to have entered into sexual intercourse in a situation when she is unable to express consent. The issue of marital rape is largely neglected. The patriarchal domination of the society has come up with time and again and has granted to the husband's exemption in cases of marital rape basing on the assumption that the wife has given herself to the husband through the contract of marriage. Marital rape is a form of rape that lays hidden under the cover of marital privacy that gives both the husband

and wife, the right to protect the private acts that they both enter with consent : it is not a guard to hide violent acts.

### **HISTORICAL BACKGROUND**

Once married, a man is bound by the duties of marriage to respect his wife and treat her with dignity. The concept of matrimonial rape has evolved in the recent period. However, neither in the past nor in the present have such laws been formed which prosecutes a married man for forcing her wife to have sex with him. In India, a married woman has absolutely no laws to protect her and everything depends only upon the interpretation of the courts. Despite many efforts put by the law commission in its reports or bills brought up before the parliament, this horrendous act which uproots the sanctity of a marriage has not been declared as an offence.

The Hon'ble Supreme Court is of the view that rape is an act against humanity as a whole. There is no mention as to what was court's stand with regard to the offence of marital rape. There is no strong law for protection of women against the exemption that Section 375 of the Indian Penal Code, 1860, which specifically states that a husband cannot be prosecuted for forcing his own wife to have sexual intercourse. However, it is not the case that there has been no progress with regard to criminalization of such activities. The addition of Section 375-A is a step forward protecting women from such torture which criminalizes any sort of force to have sexual intercourse, used on wife who is living separately. The husband can be fined and imprisoned to a maximum of 2 years.

Thus, in India we see that the present scenario with regard to marital rape is that the offence, in a due factio manner exists in the legal regime but there has been no formal illegalization and criminalization of such offence.

### **TYPES OF MARITAL RAPE**

1. **Sexual coercion by non-physical means** - This form of coercion involves social coercion in which the wife is compelled to enter into sexual intercourse by reminding her of her duties as a wife. This form of coercion entails applying non-physical techniques and tactics like verbal pressure, making false promises, threatening to end

the marital relationship lies etc. in order to get into sexual contact with a non-consenting female.

2. **Forced sex** - This involves the use of physical force to enter into sexual intercourse with an unwilling woman. It can be further classified into the three categories :
  - **Battering Rape** - This form of marital rape involves the use of aggression and force against the wife. The beating may occur before the sexual assault so as to compel her into sexual intercourse.
  - **Force only Rape** - In this form, the husband does not necessarily batter the wife but uses as much force as is necessary to enter into sexual intercourse with the unwilling wife.
  - **Obsessive Rape** - This form of rape involves the use of force in sexual assault complied with perverse acts against the wife.

### **EFFECTS OF MARITAL RAPE**

Marital rape affects a woman drastically, it has always been thought that if woman is raped by her partner it is comparatively less traumatic for her, but that is a myth. Research shows that marital rape has more severe and long lasting consequences for women because of the simple fact that the rapist is none other than her husband with whom she had expected to spend a lifetime of happiness.

1. **Physical effects** - The physical effects of marital rape includes injuries to private organs, bruises, torn muscles, lacerations, fatigue etc. women also suffer from other complications like broken bones, blackened eyes and wounds inflicted by any sort of a weapon during sexual violence. They also go through some gynecological problems due to marital rape like miscarriages, infections, infertility and also the chance of contracting of various sexually transmitted diseases like HIV etc.
2. **Psychological effects** - The trauma a women goes through when her own husband rapes her cannot be explained in words. The psychological effects are far worse than the physical effects. Some effects are shock, fear , post traumatic stress, suicidal tendencies, eating disorders, depression, sexual dysfunction etc.

In a research it was concluded that a husband who forcefully tries to have sexual intercourse with his wife always has some intention behind it. The reasons can be to have a feeling of power over her, way of getting rid of his anger over her or due to some other tensions, having a sense of insecurity or in other words having an inferiority complex over her, having a sadistic nature and getting sexually aroused by causing her pain and fear, choosing coercive sex over consensual sex and finally to ensure a sense of entitlement. Marital rape in itself is a type of domestic violence. It is an act of forceful and violent control and thus, sometimes includes physical abuse, emotional abuse, mental abuse, social abuse, financial abuse, spiritual abuse and usage of male privilege. Wife experiencing such forms of abuse may doubt their own worth or sanity and may have little self-confidence.

### **A COMPARATIVE STUDY WITH REFERENCE TO INDIA AND U.S.A AND U.K.**

Marital rape is a widespread problem for a woman that has existed for centuries throughout the world. Despite this fact, marital rape has been largely overlooked in the rape and domestic violence literatures, this problem has received attention from the society as a whole but after analyzing the need for reforms in the legal system regarding the penalization of various crimes against women and specially married women, various crimes against women, various countries have acknowledged this as a crime with severe penalties. Some of such countries and penalization in their law are as follows-

#### **1. U.S.A**

In U.S.A, until 1975, every state had a 'marital exemption' that allowed a husband to rape his wife without fear of legal consequences. By 1993, largely in response to the women's rights and equality movement all 50 States and District of Columbia have enacted laws against marital rape. The only marital exemption that still exists in some States is for statutory rape. All States now recognize rape within marriage as a crime, and mostly charge the crime in the same way that rape between strangers would be charged.

#### **2. U.K.**

The marital rape exemption was abolished in England and Wales in 1991 by the Appellate Committee of the House of Lords in the case of *R v R*. In the case 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 that given up herself in this kind into her husband which she cannot retract.

### **3. INDIA**

In India marital rape exists de facto and de jure. Domestic violence has emerged as the single largest crime against women. In 2015, the National Crime Records Bureau (NCRB) reported over 3,14,575 cases of crime against women. After the Delhi Gang Rape case, the government of India tried to make and implement arduous laws keeping in mind the safety of women. Marital rape although has still not been able to achieve the status of a crime. Article 14 of the Indian Constitution states 'Equality before law'. It prevents states from discriminating amongst the citizens on any ground, but in regard to defining marital rape as a crime the State discriminates against women. As per exception of Section 375 of Indian Penal Code, a married female below 15 years has a right to allege her husband against the charge of marital rape if her husband forces her to have sexual intercourse with him without her will. Moreover, this exception under 375 of Indian Penal Code is in itself contradictory because as per the Hindu Marriage Act 1955, Section 5 (c) (iii) the rightful age for a female to marriage is 18 years. Thus, it leads to contradiction in laws prevailing in India.

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 a sexual intercourse with her husband then the validity of her right to exercise her personal liberty is questionable. Exception to Section 375 of Indian Penal Code violates this right given to all females. Article 51 A (e) of Indian Constitution states that the fundamental duty of every citizens to renounce practices derogatory to the dignity of women. However under Section 376 B of the Indian Penal Code, a man is punished with imprisonment not less than two years which may exceed to seven years and shall be liable to fine for forced sexual intercourse without the consent of the judicially separated wife. The delay in the acknowledging marital rape as a crime is a fault on part of the Indian Judicial System, there is immediate need to criminalize marital rape in India.

## **CONCLUSION**

The researcher have tried to provide an understanding as to the nature of the crime of marital rape. This research has not been restricted to the issue of marital rape as a group for divorce. The researcher had tried to point at the loopholes existing in the current system by throwing light upon the relevant provisions of different marital rape laws of the different countries. In India, some form of the provisions of the Domestic Violence Act that prohibits any form of sexual abuse in a marriage. However, this Act providing civil remedies only is not a sufficient tools in the hands of the women. The Legislature must look into the issue of enacting new laws and provisions for a crime as heinous as marital rape.

## **SUGGESTIONS**

- Marital rape should be recognized as an offence under the Indian Penal Code.
- The punishment for Marital Rape should be the same as the one prescribed for rape under Section 376 of the Indian Penal Code.
- The legal position of the marital rape should be recognized as a valid ground for divorce for the wife.
- Apart from judicial awakening, general awareness of such offence by the citizens is also important.