**Abstract**

"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

Rape is considered a most heinous and abhorrent crime in every civilized society. Every decent person condemns it and even inmates treat rape accused differently in prisons.\(^1\) Marriage in India is a sacred institution; it implies lots of privileges and obligations to husband and wife. But sometimes it creates suffocation to vulnerable parties i.e. women. This is the junction where question arises, is it really a unquestionable and absolute right of husband for sex with her spouse?

---

* 7th Semester law students, pursuing B.A.LL.B. from Guru Ghasidas Vishwavidyalaya, Bilaspur, Chhattisgarh.

I. Introduction:

Justice Krishna Iyer said, "Murderer kills the body of a victim, but rapist kills the soul." The impact of rape is not only hurtful to a women’s body but the whole lifelong psychological trauma has to be suffered by her since her consent is not considered. It damages her modesty, self-respect and all virtues. It threatens the tranquility of society. The rape has its primary objective of male dominance over woman and the same is followed in marital rape as well. **Section 375** of IPC defines the rape with its exceptions, whereas **Section 376** deals with the provision for punishment for rape.

**Explanation of Section 375 of IPC : Marital Rape**

Section 375 Explanation 2 of IPC implicitly says that, “Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.” Punishment for marital rape: Imprisonment up to two years or fine or both. It categorically implies that sexual violence by husband is not at all cruelty over wife. But what about the females above 18 years of age, there is no provision which ensures protection from such abuse. This implicitly provides an alarming need to criminalize marital rape.

II. Sociology of Marriage

In Jurisprudence, study of the impact of laws on society is imperative, to understand its consequences. Marriage in India is a complex and sophisticated institution. Role of Caste and Religion are very decisive in marriage, irrespective of individual’s choice. Marriage in its very nature is not a relationship between two equals but a relationship with subordinates.

---

2 Rafiq vs State of UP
3 Amendment made in the case of Independent Thought vs Union of India, 2013
The values enshrined in marriage institutions grant many privileges to men and obligations to women, which are very similar to servitude. Whereas it is acknowledged as a sacred and lifelong relationship, sexual dominance is considered as an exclusive and absolute right of husband.

III. Impact Of Law Against Marital Rape On Caste & Religious Endogamy

The Caste & Religion are inalienable parts of marriage. Matching of groom and bride in India, is largely based on caste and religion, irrespective of personal choice of individuals. Only 5% of marriages in India are inter caste\textsuperscript{4} - inter religious. It vindicates that parents will have predominance in selection of spouses.

Laws against marital rape have potential to damage caste and religious endogamy. The unwilling match cannot sustain long with advent of marital rape laws. Youths are more likely to prefer a partner of their choice, so that any conflict or animosity can be redressed by mutual understanding. The obligation of respect for consent and wife’s rights, insist to break the social barriers and the patriarchy becomes more sensitive. So, we can say it will be the most prominent indirect effect on marriage institutions.

\textit{Afterall "Marriage is not a License to Rape, Consent Is Everything."}

IV. Privacy : An Unfair Advantage

Issues of husband and wife are considered a grossly private subject, even parents do not like to intervene. The wives are expected to be more tolerant toward misbehavior of the husband due to the onus of sustaining marriage in all circumstances. This gives an unjust favor to the husband. Parents do not heed toward grievous domestic violence and sexual abuse.

\textsuperscript{4} IHDS-II (India Human Development Survey) data
V. Are Rape and Marital Rape Are Different?

Juxtaposing Rape and Marital Rape is preposterous. In a Just society, we can’t have double standards for the same crime. A slap hurts equally to man and woman, married or unmarried. The trauma and humiliation don’t make any distinction to individuals. We wish that law will punish and society will make solidarity with victim. But similar treatment is not happening with victim of marital rape.

VI. Dissent Over Marital Rape Laws

The various concerns raised by society are also remarkable against marital rape laws. Late Legal connoisseur Mr. Ram Jethmalani opined that marital rape cannot be resolved by mere laws. This should be left over education. Youth should be more careful while choosing their partner for marriage. Such laws may make marriage more unstable. Fear of ‘Woman Despotism’ - Society is apprehensive, that law against marital rape will be threatful for husbands. Women may abuse the law. Bogus, vexatious suits may be filed against husbands for extortion or selfish motives. It may be used as an instrument of blackmailing. Indeed, abuse of law is ubiquitous but mere fear of abuse of law should not deprive millions of victims from justice. What recourse otherwise such victims will have?

VII. Legal Status of Marital Rape in Indian Law

- Section 375, the IPC section deals with rape, "Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape."
- Section 376 of IPC, provides punishment for rape, the rapist shall be punished with imprisonment up to 10 years and fine ‘unless the woman raped, is his own wife.’
- Domestic Violence Act, 2005 provides civil remedy to marital rape.
Section 122 of Indian Evidence Act prevents evidence of marital rape from being admissible in court unless it is a prosecution for battery or physical and mental abuse.

VIII. World-Wide Laws on Marital Rape

Today many countries have either established marital rape laws, revoked marital rape special cases or have laws that do not recognize marital rape and ordinary rape. This demonstrates marital rape is currently perceived as an infringement of human rights. In 2006, it was assessed that marital rape is an offense rebuffed under the criminal law in no less than 100 nations and India is not one of them. Over 104 countries across the world have criminalized marital rape. Poland was 1st country to explicitly criminalize marital rape and till now India, Pakistan, China, Saudi Arabia, the powerful developing and developed countries has not criminalized yet. Nepal in 2002 New York in 1984 South Africa, Ireland in 1989 have criminalized marital rape.5

IX. Survey Reports on Marital Rape

More than two thirds of married women in India aged between 15 to 49, have been beaten or forced to provide sex, regardless of their socio-economic positions. (As per the UN population fund)6 1 in 5 men has forced his wife 31% of married women (nearly one in three) have been directed to face physical, sexual & emotional violence at the hands of their spouse.7

---

6 http://www.legalservicesindia.com
7 As per the International Men And Gender Equality Survey 2011
X. Recent Case of Marital Rape:

A High Court division bench of Justices Rajiv Shakdher and C Hari Shankar had delivered a split verdict in the case with Justice Shakdher striking down the exemption to marital rape and Justice Shankar upholding it. An appeal has been filed before the Supreme Court against the split verdict of the Delhi High Court in the marital rape case on the validity of Exception 2 to Section 375 of the Indian Penal Code [Khushboo Saifi vs Union of India].

Exception 2 to Section 375 effectively provides that charges of rape cannot be attracted against a man who has non-consensual sex with his wife. The validity of the same had been challenged before the High Court.

"The impugned provisions in so far as they concern a husband having intercourse with his wife without consent are violative of article 14 and are, therefore, struck down," Justice Shakdher had held. "I do not agree. There is no support to show that impugned exception violates Articles 14, 19 or 21. There is an intelligible differentia. I am of the view that the challenge cannot sustain," Justice Shankar had ruled.

XI. Case Laws Regarding Right To Sexual Privacy\(^8\)

Right to privacy is not mentioned in the Indian Constitution. Nevertheless, in a series of cases like Kharak Singh v. State of U.P.; Govind v. State of Madhya Pradesh, Neera Mathur v. LIC etc, the Supreme Court has perceived that a right to privacy is intrinsically ensured under the extent of Article 21. The Right of Privacy under Article 21 incorporates a right to be allowed to sit unbothered and not aggravated. Any type of intense sex damages the right of protection, sexual security.

\(^8\) Article 21 of The Constitution of India
It is presented that the teaching of marital exclusion to rape damages a wedded lady's entitlement to protection by driving her to go into a sexual relationship without wanting to.

XII. Conclusion

An individual's dignity and modesty, irrespective of gender or other identity, has foremost importance. No man or woman has the right to infringe on the natural rights of a person, not even in case of marriage. Law has to ensure justice because injustice anywhere, is a threat to justice, everywhere. Marital Rape is a disease of our society which can be cure only by due precaution and care. It directly corrodes marriage and family institutions. Moreover, we need to amend our existing laws to acknowledge marital rape. Today, we have to understand the nature of marital rape as an offence and expound it in such way that it saves the innocent and advance the society. Otherwise society has to face adversities.

India has always been holding the beacon of truth, liberty, equality and fraternity. To keep that reputation intact we have to acknowledge basic rights of half of the population of the country i.e. women and ensure their protection from all types of evils of society. Whatever the changes required in law or in society should be welcome. Changes are inevitable to be relevant with time.

"It is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change." -Charles Darwin