

MARITAL RAPE: SEX WITHOUT CONSENT IS RAPE

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NO MEANS NO

“BEHIND CLOSED DOORS”

So you think you bought me?

ABSTRACT

“Truth: Rape does indeed happen between girlfriend and boyfriend, husband and wife. Men who force their girlfriends or wives into having sex are committing rape, period. The laws are blurry, and in some countries marital rape is legal. But it still is rape.”

— [Patti Feuereisen, Invisible Girls: The Truth About Sexual Abuse—A Book for Teen Girls, Young Women, and Everyone Who Cares About Them](#)

Aarti is a woman around 35. She has been in a conflicted marriage for years. Her husband insists on morning sex, even though he knows it will make her late for work. She is forced and gives in to get it over with.

Another case is of newly married Sanjana, who is upset because her husband has been having sex with her while she is asleep. He says she agrees in her [sleep](#). She feels violated.

Kajal, age 18, her husband slaps her every night around and then forces her to have sex saying that he just knows she loves it. She doesn't want to leave. But she honestly doesn't love domination as part of sexual intimacy.

Do these cases come under the definition of rape?

Rape is sexual intercourse against a will or consent of the person. Nowadays, we hear about many such heinous incidents happening around us. It is hard to believe that in every 107

Seconds in India a sexual assault occurs. Typically, rape victims are of age bracket of 16-27 years. But we should not forget that man, women, adults or a child, anyone can be a victim of rape and in most cases culprit is someone close to them.

To fight this evil, we have concrete laws which penalize the act under code, any form of sexual abuse or abrupt behaviour lowering the dignity of women will be critically tackled. So

what about situations when this man who is charged with crime is victim's husband?
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](#)

The apex court read down a provision in the Indian Penal Code of 1860 exempting males from being tried for rape if the wives were between the age of 15 and 18 years.

In the original petition before the high court, the petitioners had highlighted that the provision under the IPC did not consider non-consensual sexual intercourse with a wife, above 15 years of age, as rape.

The petitioners submitted that there was a need to strike down the exception clause under Section 375 of IPC that says that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. **Yes, such laws still exists. SHAME!!!**

The societal erosion of marital rape is not a new threat to women, the question we need to answer here is:

Is rape acceptable if it is bound by the institution of marriage?

Does a husband have the right to rape his wife?

Is marriage a ticket to endless sex and rape of the spouses?

Isn't marriage more than just sex?

Although marital rape or spousal rape is a criminal offence in many countries, some countries only provide civil help. Rape is a serious criminal offence whereas marital rape in some countries is not even penalized under codes. One such country is India.

Are we so backward that we are licensing rape? India is a land of customs and traditions where husbands are treated as gods and decision makers of the house.

Marital rape victims in India are given only civil recognition and not criminal. **Guess what, they still think money can heal all wounds.**

Are we truly against rape? Crime against women should never be given a way. But the sad fact is we still don't have strict concrete laws to tackle this inhuman issue.

Thus, paving a rose bed road towards cruelty against women, else it is only matter of time that rapists would get married only to rape their wives and exploit them.

According to former Home Affairs Minister, Haribhai Choudhary, marital rape can't be made a criminal offence in India because of high illiteracy rate, poverty, extreme religious beliefs and the very fact that women are told to preserve the institution of marriage and sanctity must be maintained in every way possible.

Many wives in India are fighting a lonely battle with very little help. They are under the immense pressure from their matrimonial families as well as from their parents not to raise a voice by filing a case and try their best to adjust with the family issues and preserve the constitution of marriage.

Marital rape is a criminal offence only if it is done to someone below the age of fifteen . But the legal age to get married is eighteen, So what about the girls from sixteen to eighteen ? They have absolutely no help.

Being married doesn't change the ethnic rules. Just because a woman said "I do" to marriage doesn't mean that she has said "I do" to sex whenever, wherever, and however her husband wants it, Mated sex, like all intimate, loving sex should be consensual. It is a way that two people who love each other express love and caring and communicate tenderness. But there are instances that question the societal norms of so called marital constitution.

Although Protection of Women from Domestic Violence Act, 2005 (PWVDA) helps provide help against marital rape and other domestic violence, it is only a civil help. Many women are forced to endure the pain inflicted on them and continue their married life. The best option by which the law protects women as to when the complaint of marital rape is concerned is charging the husbands with a minor offence of cruelty, for which punishment goes up to maximum of three years.

Once married, men think that any sort of sex he indulges in with the wife is normal and cannot be called rape, even though there is some sort of physical torture or abuse. Marital rape simply means that husband does not have sensitivity towards wife.

For motivating the law makers, here are some examples, Marital rape is illegal in 36% American States, three Australian States, in countries like New Zealand, Canada, Israel,

France, Sweden, Denmark, Norway, Soviet Union, Poland and Czechoslovakia. Rape in any form is an act of utter humiliation, degradation and violation rather than an outdated concept of penile/vaginal penetration.

The total number of rapes reported to NFHS, 97.7% rapes were committed by the people known to the victim out of which marital rapes account for 2/3rd. UN study has established the facts that 75% men want their wives to agree to sex¹. There have been many heartbreaking stories of women raped every night, even during pregnancy. Marital rape is not only physical but also a mental trauma because the wife is known to the person, often very close. So it is the bitter reality even in developed nations.

Married life for them has become living hell. They are neither given recognition of the crime nor justice for the same. With the burden in fight against other social stigmas, women have an additional weight to fight against this monstrous crime in their own homes. Rape laws in India continue with the patriarchal mind-set of considering women to be the property of men post marriage with no autonomy over their bodies.

In approximately 106 countries, marital rape is either having criminal backing or positioned under human rights issue but the mentality of Indian law framers continues to be orthodox.

Women today cannot be safe or happy in their own homes. Being called a burden, they are married as early as possible. Is it that we forget that this woman is the same daughter who is ready to sacrifice everything and leave home, she is the same wife who stands by you in pain and sorrow, and also she is that mother who gives birth, fights with world and looks after you?

Even when a wife is tortured, she prefers to stay quiet and make her marriage work, not because she is weak but because of the love, patience and hope she has for her family regardless of them loving her back. She tries to find happiness in her family.

In the light of the recent United Nations reporting, it stands true that women in India are 40% more likely to be raped by their husband than by a stranger. This must be taken strictly that marriage doesn't amount to volunteered sexual consent at all times to come. Justice Leila Seth elucidates in her book *Talking of Justice, People's Right in Modern India* regarding the

¹ <https://www.iaspaper.net/marital-rape/>

issue, quoting her "...a woman autonomy and integrity are concepts that have developed over the years, thus making rape an offence unless there is true consent."

We need an amendment to Section 375 of IPC under the areas regarding marital rape, interpreting that marital relationship, physically or forcible sexual intercourse with their spouse involving in sadistic sexual violence and any such act without the consent of their spouse shall be punished with rigorous imprisonment for a term which shall not be less than ten years and shall also be liable to fine.

The critical matter was listed before a bench of Acting Chief Justice Gita Mittal and Justice C Hari Shankar which during the brief hearing noted the concern raised by the NGOs, [RIT Foundation](#) and the All India Democratic Women's Association².

The court asked senior Advocate Raju Ramachandran, who is assisting it as an amicus curiae, to freely express his views on the content in which the Centre has maintained that marital rape cannot be made a criminal offence as it could become a phenomenon which may disturb the institution of marriage and become an easy tool to harass the spouse who is *equal to god here*. Can anybody guide me here what's with the harassment faced by wives here?

Similar to culpable homicide, rape is a reprehensible act that leaves a body defiled. However, rape victims are not like victims of murder; they survive that hell and face the ridicule and relive that every day each moment. Worse yet, they really never leave the scene of crime. The mental agony of the rape victim in marriage and marriage cannot be described in legal terminologies.

The wife's role has always been understood as bowed, docile and that of a housewife. Sex has been treated as obligatory in a marriage and also a biggest and most harsh taboo. At least the discussion openly of it, hence, the awareness remains dismal. Economic independence, a dream, they are not even aware of their basic rights, for many Indian women still is an undeniably important factor for being heard and respected. With the women being given the bitter medicine of being "good wives" or "serve the lord husband", to quietly serve and not wash dirty linen in public, even counseling remains untrodden.

Despite the inhumane incident of gang rape and death of 'Nirbhaya', the massive protests, the uproar in parliament and the Justice Verma Committee, which indeed gave recommended

²<https://timesofindia.indiatimes.com/india/marital-rape-issue-of-tremendous-importance-hc/articleshow/61918857.cms>

codified laws on marital rape, India's parliamentarians seems still not to find it in them to treat married and unmarried women equally, on matters of rape and sexual violence.

In the circumstance of the law negate to the reality of sexual violence within marriages and

. its failure to penalization, "Married women only have the option of using section 498A of the Indian Penal Code, which lays down provisions on cruelty, if they need to allege sexual violence against their husbands," says Kavita Krishnan, secretary of the All India Progressive Women's Association.

In a 2014 survey of more than 9,200 men across seven Indian states, one-third admitted to having [forced a sexual act on their wives](#). Marital rape is a [widespread problem](#) in India.

According to a 2018 *National Family Health Survey*, more than 80 percent of married women who have experienced sexual violence named their current spouse as the perpetrator³

There was a ray of hope which shined upon the written laws of country, the ruling of *Gujarat High Court* under this matter that marital rape is "destructive attitude" that promotes rape in a marriage can be removed only by making marital rape "illegal". Gujarat Top Courtroom's ruling is a [positive step](#) towards the criminalisation of marital rape in India.

Even though [public pressure](#) has been mounting to [change the law](#), there's no indication a revision is coming near

We need strong strict laws to tackle this social issue, just for sake of saving the matrimonial relation women can't be forced and advised to survive through hell. This is disheartening that Even in this well-educated and high tech era with so much of developments around regarding social and technical front still we are fighting for rights of women. But need of the hour is that laws must be enacted and the reason that such will "[destabilize the institution of marriage](#)" must not be entertained and understand that

Mr, Rape is Rape...Marriage or 'She's my wife' is no defence!!

³ https://www.huffingtonpost.com/.../india-marital-rape-gujarat-high-court_us_5ac571d..