

**“Behind the Closed Doors”***Bhumika Arora**B.A.LL.B,**Fairfield Institute of Management & Technology, GGSIPU***ABSTRACT****“A Murderer kills the body but a Rapist kills the soul”**

-Justice Krishna Ayer

Rape could be a stigma that exists within the society for an extended time. The wordbook that means of Rape is “**The ravishing or violation of a woman.**” It is outlined as the unlawful carnal knowledge of women without her consent. Carnal knowledge was defined as sexual intercourse. Today, additionally to the necessity of sexual congress, most rape statutes need force or threat of force against the need and while not the consent of the victim. Rape inside wedding could be a conception that agonies the spouse to the terribly core. The offence against women, violating her dignity and self respect and once it happens inside four walls of matrimonial home, it reduces the women to the standing of an object used just for sexual gratification. Marriage is thought to be one amongst the foremost sacred establishment of our country, by that one legalizes their right to procreate. However once this sanctity is destroyed, this establishment shatters utterly, and what remains is simply a show of its ruins to the society. The thought of ‘Marital Rape’ is prevailing during this pious relationship for ages; and women have had to face numerous difficulties and health issues, as they are silent sufferers. Its roots may also be derived to the absence of correct legislations and social stigmas. The main purpose of this analysis paper is to seek out on whether or not sex while not the consent of adult female ought to be thought of Rape. “Rape ought to be thought of as rape, no matter the perpetrators relationship with the victim.” The research paper discusses numerous notions concerning rape and specifically marital rape and throws light-weight on some crucial and burning truths of our trendy society. The “hue and cry” by women of our nation, concerning the group action of the crime, appears to be vain. Taking into consideration the largeness of the subject, ism analysis methodology has been adopted for the undefeated completion of this analysis paper.

**INTRODUCTION**

*“Happy Marriage begins when we marry the ones we love and they blossom when we love the ones we marry.”*

-Tom Mullen

When somebody thinks of rape, the primary issue that pops into their mind is to think about somebody who may be an intruder, a malicious person. Usually nobody thinks of rape within the context of marriage. Even women themselves notice it troublesome to believe that a

husband will rape his better half. After all, however will a person be defendant of rape if he's availing his marital status right? It is indicative that a woman has no right to her own body and her will is subject to that of her husband. Though marital rape is that the most typical and repulsive form of sexual pleasure within the society, it is well hidden behind the iron curtain of marriage. Whereas the legal definition varies, marital rape may be outlined as an unwanted intercourse of penetration (vaginal, anal, or oral) obtained by force, threat of force, or once better half is unable to consent. Despite the prevalence of marital rape, attributable to marital status exemption this downside has received comparatively very little attention from social scientists, practitioners, the criminal justice system and bigger society as an entire.

***'Marriage isn't a mere exchange of a pair of rings. It's a vow to always trust and stand by your partner because every healthy relationship is based on a foundation of honesty and faith.'***

Marriage is an institution that helps to socially develop an irreparable bond of trust, faith and honesty between the two individuals. It's a procedure under statutory and customary law that legitimizes their right to procreate. It is not solely the connexion of two bodies however it weaves within the minds and souls of two people who are meant to be with each other through all ups and downs in life. Having married with one another, both the man and woman conjointly also gain some rights and duties towards one another and each one among them is to respect each other and acknowledge them as "Equals" within the relationship. However legal rights that arise out of a marriage are quite questionable as to their extent as a result of the thought that then arises within the husband's mind is that he has free access over his wife's body which he can demand for sex, only for the sake of fulfilling his lust and pleasure, forcefully eliminating her right over her own body. The pious ceremony of marriage that is deemed to be made in heaven, creating assurance in the mind of the wife that she shall receive warmth, care, respect and safety from her husband who is supposed to protect her from outsiders, as a huddle of diverse and special feelings overpower her mind, creating an anticipation of many things, before tying a knot. But once the evil itself lurks within the shadows of her own house and the protector himself become the defiler, then whom shall she turn to? Such an act of forceful intercourse not solely ruptures the wife's sense of self-reliance, dignity and self-worth, however additionally tears down the elementary roots of the relationship.

Rape is an offence which is regarded as the highest kind of torture, inflicted upon "womanhood." It shakes the dignity and self-respect of the woman from the terribly core and once it take place within the four walls of matrimonial home, that too by an individual whom she had never thought of, it shatters her completely. She has thousand of justification within herself for suffering the crime silently. She has been provided with hundreds of protection and measures to safeguard her form the crime committed against her, by the outsiders. But when it comes to her husband, then why is she not provided with any protection? Is it because in the Indian society the husband is given the standing of "Devta or Parmeswar"? Or is it attributable to the actual fact that she often schooled by her ancestors that she should

“Samparan or Submit” her body, mind and soul to her husband completely, after the marriage. Hence, she shouldn’t be given any right to refuse to have sex. Such situations need to be thought-about as “rape” regardless of the actual fact that the person committing it is an outsider or her own love as a result of the woman ought to be the sole one to own a right to convey her body to someone for sex.

Before understanding the Marital Rape firstly, we have to discussed about Rape and how Marital Rape becomes rape.

## **RAPE**

The word “Rape” has been derived from the term “Rapiro,” which means ‘to seize.’ Rape is therefore, forcible seizure, or the ravishment of a woman while not her consent, by force, fear or fraud. It involves coercive, non-consensual sexuality with a woman. Rape may be viewed as an act of violence against a woman, an outrage by all means that. It is ultimate violation of the self of a woman. The Supreme Court of India has aptly described it as ‘deathless shame and the gravest crime against human dignity.’<sup>1</sup> Rape isn’t merely a sexual act to which one party doesn’t consent. Rather, it’s a degrading, violent act that violates the bodily integrity of the victim and regularly causes severe, long-lasting physical and physic damage. To ever imply consent to such an act is irrational and absurd. A spouse has a similar right to manage her body as does an unmarried woman.

## **MARITAL RAPE**

Marital rape refers to rape committed once the offender is that the victim’s mate. The definition of rape remains an equivalent, i.e. sexual intercourse or sexual penetration when there is lack of consent. Thus, a necessary ingredient to prove the crime of rape is to prove the dearth of consent. This burden to prove the dearth of consent often rests on the victim. I some instances, as within the case of minors, it is plausible that consent doesn’t exist as they are plausible by law to be incapable of consenting to such sexual acts. On the other hand, there are instances once consent is plausible to exist. Often, this presumption exists once the victim and the perpetrator are married. In such instances, the idea of marital rape becomes antithetical.

Rape per se is an offence against a woman, violating her dignity and self-respect and once it occurs at interval the four walls of a matrimonial home, it reduces the woman to the standing of an object used just for sexual gratification. There’s an on the spot would like for a definite law on marital/spouse rape in India, that ought to be at par with the accepted international norms on this issue.

Rape within marriage may be a thought that agonizes the spouse to the terribly core. The dread of having to face it associated still need to wordlessly suffer through it’s an unendurable though that affects the psyche of the women. This self-enforced silence features

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<sup>1</sup> Bodhisattwa Gautam v. Subhra Chakraborty AIR 1996 SC 922.

a terribly damaging impact on the emotional, psychological and mental stability of women. However, this silence isn't specifically self-enforced. The lack of laws and abundant social stigmas against the act of marital rape is one amongst the first reason that the evil of marital rape continues to be hidden behind the sacrosanct of marriage. The woman has been given the right to fight for protection when the violators are outside entities, however once the perpetrator of her bodily integrity is her own husband, who she married with all the pomp and show, such protection is withdrawn by the legislators. In lightweight of this, the idea that a woman (wife) should make out together with her husband regardless of her will, consent, health etc, is absolutely unacceptable to a civilized society.

Thus, there is no justification or applicability of the notion of marital exemption within the current times. It is true that mere criminalization of marital rape in India won't finish the matter; however it sure is an important step towards dynamic women's expertise of sexual violence in a marriage. It is high time that the thought of 'rape is rape, irrespective of the relationship between the victim and the perpetrator is recognized by the law and place strictly to force.

***If no permanent injury has been inflicted, nor malice, cruelty, nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.<sup>2</sup>***

The issue of marital rape- in Republic of India, has shown an enormous loophole within the country's judicial law. The fact that there is acceptance of unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to relinquish consent indicates the status of women in society and within the institution of marriage. Marital rape might be by the use of force only, a battering rape or a sadistic/obsessive rape. It is a non-consensual act of violent perversion by a husband against the wife wherever she is physically and sexually abused.

***"HE PUSHES ME ONTO THE BED AND JUMPS ON ME AS IF MAKING LOVE TO HIM WASN'T AN OPTION BUT AN OBLIGATION"***

***-Simar Singh (The Legal Rapist)***

India is one in every of the few countries within the world that continues to exempt husbands from being charged with rape committed against their wives. Despite amendments, law commission and new legislations, it's however to be thought about an offence. The recent stance of the Supreme Court, what makes rape acceptable within the institution of marriage, is the clause 2 of Section 375 of the Indian Penal Code (IPC). The exemption that aims at protective the "institution of marriage", a man will still have sexual intercourse or indulge in a sexual act together with his wife, even against her wishes. She solely must be over fifteen years of age. Criticizing the government and therefore the judiciary, there is a serious outrage

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<sup>2</sup> State v. Oliver, 70 N.C. 60, (1874)

by many women rights activists and NGOs claiming the rape laws to be anti-woman and dilutes child rights.

*“The day will come when men will recognize woman as his peer, not only at the fireside, but in councils of the nation. Then, and not until then, will there be the perfect comradeship, the ideal union between the sexes that shall result in the highest development of the race.”*

*-Susan B. Anthony*

Marital rape is one amongst the manifestations of domestic violence. Though it causes additional harm than a sexual assault performed by others, marital rape was not a significant theme in literature until recently, related to the legal immunity of spouses in terms of rape crime.

It is a recently adopted idea that gender should be reciprocally desired by each party and otherwise it ought to be thought-about as rape. Legislative regulations according to this idea went in effect.

### **MARITAL RAPE: THE HISTORY OF NOT BEING AN OFFENCE**

The social downside of marital rape is prevalent in our society for ages, though silence has been maintained around it. Marital rape is an exemption to the offence of rape. The history of this exception is copied back to the Upanishads and therefore the customs prevailing. The upbringing of the male segment of the society, in a way gives us the justification for the existing laws. In several areas, particularly within the rural ones, they are tutored from their childhood concerning their dominance over women. Position of women has continually been shown as a “slave”, “a chattel”, or as “a property.” An incidence for this treatment can be reverted back to the days of “Mahabharata”, where “Draupadi was gambled off in an exceedingly game of dice by her husband’s.”

The dominant nature is inbuilt in these men from the terribly starting. The image that is delineated in their eyes regarding marriage is that the “license to have sex.’ They are invariably schooled that the women they marry ought to be “pure” and “pious”, notwithstanding what they see themselves within the mirror as. “Chastity” is that the most vital feature thought-about notwithstanding their mothers additionally being a woman, they unfold the tentacles of greed all around their sons. He is even schooled that he shouldn’t hesitate on his “first night” for testing the “virginity” of his soul-mate, even though the woman hesitates. This has been prevailing as a custom since long, as a “white bed sheet” is used for testing her “piousness.” So, the footprints of this exemption may also be derived back to the “orthodox beliefs” of our society. It is additionally provided below the “Upanishads” that the husbands are free to have sex with their wives forcefully and also the wife is being thought-about to tend a permanent understood consent to the sexual relations along with her husband at the time of marriage that cannot be revoked subsequently. Thus,

such assumptions regarding men, women and their married and sexual life impliedly gave consent to the validity of the marital rape exemption. According to “Manusmirti” additionally if the wife denies having sex along with her husband, then she isn’t thought-about as an “ideal” wife. The doctrines of the marital rape as an exception also owe its existence to the conception of “irrevocable implied consent.” As per this notion, once a woman is married to a man, there is speculated to be an implicit permission to sexual intercourse, which is irreversible in nature.

### **Why Marital Rape should be criminalized?**

Though the IPC is evident in this it doesn’t criminalize marital rape and ulterior amendment petitions have failing, it should be argued that the court decisions defining the parameters within which rape may be found, can even be accustomed facilitate the argument to criminalize the marital rape. As mentioned antecedent, the two major reasons for not criminalizing are that proving that a rape has occurred in a marriage would be too troublesome and that criminalizing marital rape would negatively have an effect on the sacred institution of marriage. As to the former point, many court decisions within the late 20<sup>th</sup> century have systematically reduced the burden on rape victims to prove their assault. As that’s the case, there’s no reason why similar latitude mustn’t be applied to cases in marital rape thereby making the crime a little easier to prove. Additionally, the aspect of marital sanctity in the 21<sup>st</sup> century has evolved and also the application of it as a reason to not criminalize marital rape ought to be seriously questioned.

The major question evaluated by the courts in cases of rape is whether or not the woman consented to having sex. Within the past, the most issue that prohibited all rape victims from having the court decree their favour was the very fact that, because the litigator, the burden of proof was on the woman to point out that she didn’t consent. However, within the 1995 case of **Karnel Singh v. State of M.P.**, the court held that the woman should not be considered an accomplice of the crime, but rather as the victim. As the victim, her testimony should not be considered with the same amount of suspicion as you would the offender’s.<sup>3</sup> At present rape is one of the few crimes in which the burden of proof lies with the defendant to prove that the woman did, in fact consent to the sexual act. As this burden has shifted for all unmarried rape victims, it is only just that the same be applied to married victims as well. As far as proving rape, the burden should now fall on her husband.

One of the problems that would still exist for all rape victims, even when the burden of proof falls on the husband, is that of believing the woman’s testimony over that of her husband. The principle that judges may use a woman’s past sexual history or her moral character in determining the veracity of her testimony was overruled in **Harayana v. Prem Chand**<sup>4</sup>. As this is the case for rape victims, the same should be allowed for marital rape victims. Based

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<sup>3</sup> (1995) 5 SCC 518

<sup>4</sup> 1990 AIR 538

on this principle, the idea that married woman cannot be raped because they have had a sexual history with their husbands is no longer valid. Regardless of a woman's past or her character, rape must be determined based on the particular facts of the incident.

### **CONCLUSION**

The authors raise several thought-provoking arguments regarding the human rights implications of marital rape. They set out forceful statements by distinguished jurists deploring marital rape and even some regional instruments that may well reflect the willingness of state parties to impose criminal sanctions in such cases. But treaties, of course, only bind states that are parties to them. Nor do the authors claim that the criminalization of marital rape is a matter of customary international law. Although they twice claim that the state's obligation to prohibit marital rape is "non-derogable." They do not claim that it is a jus cogens norm. Even if, as set out in note, "several jurisdictions" recognize that the opinions of treaty bodies should be given considerable weight," this does not mean that such opinions constitute international law. In sum, while the authors make a strong case that the criminalization of marital rape could be beneficial, at least for some women.