

# The Dark Shadow of Marital Rape: Need to Change the Narrative

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## Marital Rape: A Hidden Darkness

Marriage is an anthropological, cultural, and legal institution, that establishes socially sanctioned rights and obligations between individuals. In many cultures, marriage forms the basis for acknowledgement of sexual relationships. However, sexual violence and physical aggression within marriages have traditionally formed a grey legal area. Marital rape refers to “forcible sexual assault or violence by one spouse towards the other.”<sup>1</sup> In other words, it’s the act of sexual intercourse with a spouse without his/her spouse’s consent. Though historically establishing sexual relationship between the married couple was considered as a “right” in many societies, the context of consent becomes equally important as among nonmarried individuals. Twentieth century onward, there has been growing international conventions and voices against sexual and intimate partner violence in marriages (more specifically for sexual violence against women).<sup>2</sup> However, in spite of the known devastating consequences of any form of forcible sexual encounter, marital rape has remained under the shadow of legal ambiguity in many nations, outside the criminal law and widely tolerated.

Marital rape is mostly, but not exclusively, experienced by women. It tends to form a vicious cycle of abusive relationships between the couple, perpetuating chronic violence. This also varies based on sociocultural and political ideologies. For example, the interpretations of the institution of marriage, traditional ways of viewing male and female sexuality, and cultural expectations of relationship dynamics among the husband-wife dyad have led to concerning reluctance of classifying nonconsensual marital sex as a punishable crime. These doctrines started getting challenged in the West between 1960s and 1970s during the “second wave feminism” that focused on gender respect, autonomy, and right to self-determination (concerning all matters of a women’s own physical self and identity).<sup>2</sup> However, marital rape has been overlooked in literature and policies throughout centuries and “marriage” being used as a common exemption/defense in sexual assault cases. This has also led to invalidation of the experiences of marital rape survivors, reduced help-seeking, and persistent trauma.

## Public Perceptions and Legal Ambiguity

Any form of forcible sexual encounter is considered as a harm to reputation, identity, and honor. Article 27, Fourth

Geneva Convention states, “Women shall be especially protected against any attack on their honor; in particular against rape, enforced prostitution, or any form of indecent assault.”<sup>3</sup> The change of narrative of rape from “family or husband’s right” to “a woman’s dignity” only started in the last half century. The concept of consent has long been neglected in marriages. Yllö mentions in *Understanding Marital Rape in Global Context*, “In some cultures, consent is not even something that an individual can give. The families that arranged the marriage guarantee her permanent consent.”<sup>4</sup> Though this has been challenged in several ways, it is still reinforced by popular media stereotypes and rape myths. One such dangerous proposition is viewing a women’s virginity as a “commodity” which is gained or surrendered during marriage. Hence, the husband is considered to be “owning” his wife’s sexuality and thus cannot be charged as having a nonconsensual sexual encounter or intimacy. Another such cultural stereotype is considering the sole purpose of marriage as procreation which makes sexual intercourse in any form “expected.”

Cultural and legal invalidation further make marital rape victims helpless and reduce access to health services. Basile stated that 80% women feel that their husbands use some form of “force” to have sex but are reluctant to disclose.<sup>5</sup> Marital rape has not been considered to be “real rape” and hence stay hidden from legal purview in spite of the adverse physical and mental health consequences. Compared to the other scenarios of rape, marital rape is less likely to be considered as a crime.<sup>6</sup> This study also showed that the victim-perpetrator relationship was the primary consideration for nearly one-third for deciding guilt and sentencing. As the offender-victim relationship gets more intimate in sexual assaults, attribution of blame to the victim is more perceptions related to harm reduce and there is lesser likelihood that the alleged incident is considered as rape.<sup>7,8</sup> Ferro et al<sup>9</sup> assessed the perceptions of college students and alumnus regarding rape myths and marital rape. A hypothetical rape scenario was presented and measures of rape acceptance were tested. Out of all the stereotypes, marital rape myths were stronger and more commonly endorsed. A marital

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relationship was commonly considered to be an “exception” to forcible sexual encounter. Such findings have been present in earlier studies as well,<sup>8,10</sup> where students have supported “sex role stereotypical attributions” and shared rape-supportive ideologies as the degree of acquaintance between the offender and victim became closer. Ironically, at the time of this editorial, we could not find recent research related to marital rape or marital rape survivors. The limited earlier literature is also skewed toward the Western nations. This is of concern as such incidents in low-and-middle-income countries are often grossly underreported due lack of specific legal provisions, using marriage as a defense, fear of legal hassles, lack of social support, and existing social stereotypes.

From the 20th century onward, most nations have criminalized marital rape. This has occurred through various ways: judicial decisions, removal of “statutory exemptions,” explicit legislative mention, or creation of a specific offense of marital rape.<sup>2,11</sup> The traditional view of “marriage itself implying sexual consent” is outdated and in many cases the common allegation is that the “promise of marriage” itself serves as an “unspoken consent” for sexual interactions. This is different from informed consent when adults agree to have sex either out of desire, love, or trust. The sustaining factors for marital rape are legal grey areas, lack of tailored policies, cultural invisibility, social myths on marriage and sexuality, popular media stereotypes, misinterpreted religious ideologies, gender expectations and importantly, and lack of research in this area.<sup>4</sup> Criminalization of marital rape also does not essentially mean that these laws are enforced and there are several lacunae. Lack of public awareness adds to this and often the perpetrators go unpunished. This fails to set an example as to how serious marital rape can be. For example, even though during the ongoing unprecedented COVID-19, intimate partner violence and marital discord have been on rise and we have all faced distress calls in our helplines, explicit discussion about marital rape in social media, or academic literature has been sparse.<sup>12,13</sup>

## The Indian Scenario

India is one of the 36 countries that has still not criminalized marital rape. Over the years, the exemption to an unwilling sexual intercourse between husband and wife (above 15 years of age) in IPC Section 375 has been widely debated and argued against.<sup>14</sup> According to the Hindu Centre for Politics and Public Policy, legal ambiguity about “consent” in sexual violence within marriage is commonly decided by mediation and compromise rather than legal discourse.<sup>15</sup> It has been argued that the concept of “obligatory sexual interaction” by the virtue of marriage is against Article 14 (Right to Equality) and Article 21 of the Constitution. India has over the years seen legislations like “The Protection of Women from Domestic Violence Act, 2005” and “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act” for the enhanced protection and safety of women. After the inhumane Nirbhaya

incident in Delhi and the Criminal Law (Amendment) Act (2013) failing to address the issue of marital rape, the appeals from myriads of women-organizations, human rights associations, and finally the Justice Verma Commission recommendation of criminalizing marital rape have set more fuel to the fire.<sup>16</sup> As the number of rape cases in India are increasing as per the National Crime Records Bureau, many incidents of marital rape are unreported.<sup>17,18</sup> As of now, the exemption still holds, and “marital rape” is considered to be a grey area; to be assessed and understood in the individual context and in light of interpersonal relationship between the couple taking into account any history of domestic abuse.

Yllö and Torres<sup>19</sup> mention that “...marital rape is regularly constituted across cultures as a locally recognized social violation—one that is understood to impede women in those particular cultural contexts from aspiring to a good human life.” Unfortunately, this form of violation is not a 1-time event and tends to form a part of chronic abusive relationships. One can only imagine the unspoken distress of multiple sexual assaults that occur behind closed doors and are normalized by the society under the pretext of marriage. This can be emotionally and physically devastating and often beyond the reach of social and health care. Disclosure rates will also understandably be low. Ultimately, marriage signifies a socioemotional bond between individuals which also entail respect, trust, and love. Sexual encounter without consent tends to be emotionally blunt and physically brutal which is fundamentally against the institution of marriage and has several harmful biopsychosocial consequences. In fact, whether marital rape takes place once or is part of an established pattern of domestic violence, trauma from rape has serious long-term consequences for victims regardless of whether the assault is prosecuted or not.

## Time to Take Action

There has been several welcome moves in India in this regard. In *Independent Thought vs Union of India*, the Supreme Court held that, “Constitutionally female have equal rights as of male and no statute or act can take away those rights from females and if such statute or an act is passed regarding the same, it should be declared as null and void.”<sup>20</sup> The Gujarat High Court has mentioned in this regard, “The total statutory abolition of the marital rape exemption is the first necessary step in teaching societies that dehumanised treatment of women will not be tolerated and that the marital rape is not a husband’s privilege, but rather a violent act and an injustice that must be criminalised.”<sup>21</sup>

However, there is a long way to go. Specific legal provisions, widespread public awareness, media cooperation, inclusion of the voices of survivors, and tailored social services are urgently needed to eliminate the nuisance of marital rape. The legal and social paradox related to marital rape in our country have led to several structural inequalities and gender-based vulnerabilities. As per Nigam, “the culture of silence,

tolerance, adjustment, compromise among women is propagated to save and respect the honour, the pride and the values of the Indian family overlooking the fact that incest, violence, suicides and murders are the price that women pay.”<sup>22</sup>

According to the United Nations Declaration on the Elimination of Violence against Women, violence against women is defined as “any act of gender-based violence that results in, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”<sup>23</sup> In light of the above, the old redundant laws related to rape in our country need urgent modification to prevent this violence behind closed doors. Rape is rape, irrespective of the victim-perpetrator relationship/intimacy as well as circumstances of the assault. Marriage cannot and will not serve as a license for the same. Marital rape is in no way less traumatic than other forms of sexual violence. Hence, it is high time we change the social narrative about marital rape by public education, advocacy, battling social myths, lived experience research, and finally a constructive dialogue with policymakers to make the necessary legislative changes.

Every effort matters!

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