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*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

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## Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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# Marital Rape: An Unaddressed Stigma

Authored By- Sushmita Bharti

B.A.LLB

Sai Nath University

## Abstract

As per data published by the National Family Health Survey 2015-2016 which receives technical guidance from the Ministry of Health and Family Welfare, Government of India, 83% of married women between the ages of 15 to 49 have suffered sexual abuse by their husbands. The hard truth that emerges from this figure is that a large number of crimes against women in India takes place in their respective homes. The issue of marital rape in India is one example of violence against women where the victim suffers both physically and psychologically at the hands of somebody close to them. But unfortunately, marital rape is not recognised as a crime under the Indian law.

### Introduction

Nowadays, we all get antiquated by what we watch in movies or on television. Movies are the part of our life. We learn dance, how to romance and how to impress our love interest through movies. Always shown in a bad taste was the hero of the movies pursuit a girl irregardless her turning down the advances of the male protagonist. This message has misguided a lot of youth and especially those who have the eligibility of being called as one side lovers. This mindset and perception carry over even when a boy becomes a husband and opinions and aspiration of his wife in bed is also of no or little significance.

But this misguidance was tarnished by Amitabh Bacchan in the year 2016 when he showed us the meaning of No in the movie 'Pink'. In the movie, stated that when a woman says No, she means so and one should stop the time.

In old days there was nothing known as martial rapes, people were not aware of it.

The mindset that a husband can't be charged with the rape of his wife was described by Sir Matthew Hale (1609-1676) in history of the pleas of the crown, published after his death in 1736, where he wrote that "The husband can't be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the wife hath given up herself during this kind unto her husband, which she cannot retract."

### Rape

Rape, unlawful sexual activity, it happened without consent. It is a form of sexual violence and serious crime that carries the same maximum sentence as murder.

In England and Wales, the legal definition of rape is when someone intentionally penetrates the vagina, anus or mouth of another person with their penis, without the other person's consent.

The voices of survivors advocates, law enforcement personnel and many others that FBI director Robert Mueller was able to make this important change within the FBI's uniform crime report summary reporting system as "the carnal knowledge of a female, forcibly and against her will."

That definition, unchanged since 1927, was outdated and narrow. It only included forcible male penile penetration of a female vagina. The new definition is "The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." For the first time ever, the new definition includes any gender of victim and perpetrator, not just women being raped by men.

### Effects of Rape

- I. 3 times more likely to suffer from depression
- II. 6 times more likely to suffer from post traumatic stress disorder
- III. 13 times more likely to abuse alcohol
- IV. 26 times more likely to abuse drugs
- V. 4 times more likely to contemplate suicide

## **Marital Rape**

Marital Rape is a very complex. The term marital when pre-fixed with “rape” serves to sanctify the crime and does not evoke the kind of saction legal as well as social. Under Indian laws husband have been granted exemption from criminal liability from charges of raping one’s wife who is above eighteen years of age. Rape whether within or outside the institution of marriage is the worst violation of any woman’s human right that defines her body as well as her soul. The idea of rape in marriage is dished out by the typical Indian cinema could also be a myth and is opposing to women’s perceptions of reality. Though marital rape is that the commonest and discrepant sort of masochism in Indian society. It’s hidden behind the ideological barrier of marriage. Social practices and legal codes in India mutually enforce the denial of women’s sexual agency and bodily integrity, which lie at the guts of women’s human rights.

The law doesn’t treat marital rape as a criminal offense. The system must be forced to simply accept rape within marriage as a criminal offense. The difficulty of penalty remains lost during a cloud of legal uncertainty. Further, women themselves must break away from societal shackles and fight for justice.

### **Types of Marital Rape**

Marital rape is often classified into three types:

- I. Battering Rape: This takes in both bodily and sexual violence. Most marital rape victims experience this category of rape.
- II. Force only rape: Husbands exercise the minimum amount of force needed to coerce his wife.
- III. Compulsive or obsessive rape: Torture and or vicious sexual acts occur and are mostly physically violent.

Physical and psychological effects of marital rape

- I. The physical effects of marital rape may include injuries to non-public organs, laceration, soreness, brusing, torn muscles, fatigue, and vomiting.
- II. Women who are battered and raped by their husbands may suffer other physical consequences including broken bones, black eyes, bloody noses, and knife wounds that occur during the sexual violence.
- III. Specific gynaecological consequences of marital rape include miscarriages, still births, bladder infections, infertility, and the potential contraction of sexuality transmitted diseases including HIV.
- IV. Women who are raped by their partners are likely to suffer severe psychological consequences also.

- V. Psychological effects are likely to be long lasting. Ex- trusting relationships, disordered eating, depression, sleep problems and increased negative feeling

## **Constitutional Safeguard Against Marital Rape**

Not only is the Indian constitution a safeguard against all the wrongs for the Indian citizens, but it also clearly demarcates what's right from what's wrong. Along with rights, it also crowns upon its citizens the responsibility that go hand in hand with it. Each citizen has a responsibility towards the state and its fellow citizens.

Under article 14,15,19 and 21 of the constitution of India us to ensure equality of women and freedom from all forms of discrimination.

Article 14 Equal Protection: Article 14 of the Indian constitution guarantees every citizen equality before the law. Two valid essentials:

- It must have rational nexus with the object it seeks to achieve,
- The criteria for classification must be based on intelligible differentia.

The object of section 375 is the protection of every woman against violation of their bodily integrity, dignity and privacy.

Though married women can approach the court under section 376 of IPC in case of rape by a stranger, they have no legal recourse in the case of rape by husband.

Article 21 Right to life and personal liberty: Article 21 guarantees every individual the right to life and personal liberty. It has been profoundly interpreted by the judiciary from time to time making it more comprehensive and inclusive, including a cluster of other essential rights such as the right to bodily self-determination, right to sexual privacy and right to health, among many things, which are all grossly violated by the exception provided in section 375.

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### **Right To Dignity**

The Supreme Court has labelled the offence of rape as an act of “deathless shame and the gravest crime against.”

In the case of a married women, does not visualize rape as a crime against women's dignity but as a crime against women's her husband's dignity. This is because a stranger can be punished for violating a 'married woman's dignity'. But when the same woman is subjected to rape by her husband, it will not amount to the violation of her right to live with human dignity.

### **Right To Sexual Privacy**

The right to make a reproductive choice is personal liberty guaranteed under article 21 of the Indian constitution. That a woman should not be treated as a commodity having no bodily autonomy or no right of her own to deny sexual intercourse with her husband.

#### **Right to good health**

Health is another compelling reason to advocate for the removal of the marital rape exemption clause.

Majority of nations in the world have criminalized all forms of rape but, India along with 35 other nations such as Pakistan, Afghanistan, Iran, Saudi Arabia, Yemen etc. continues to provide marital rape exemption. The reason is that India has many gender specific laws that favour women and there is a threat of such laws being misused by disgruntled wives against their husband. The exceptions of marital rape provided in section 375 is a reflection of prejudice and centuries of discrimination, subjugation and objectification faced by women at the hands of the patriarchal society.

## **Status Of Safeguard For Women In Indian Society**

We live in a world where goddesses are worshipped and women get tamed, peddle, abused, raped and kidnapped every single day.

The Protection of Women against Domestic Violence act, 2005, aims to “provide for more effective protection of the rights of women, guaranteed under the constitution, who are victims of violence of any kind occurring within the family.”

Rights an Indian woman holds in India:

- I. Women have a right to zero FIR: an FIR that can be filed at any police station categorical of the location where the phenomena occurred or a specific jurisdiction it comes under, the Zero FIR can later be moved to the police station in whose jurisdiction the case falls under.
- II. Right against being stalked: section 354D of the Indian Penal Code makes way for legal action to be taken against an offender if he/she follows a woman, irregardless a clear gesture of apathy; or monitor the use by a woman of the internet, email or any other form of electronic communication.
- III. Right to register virtual complaints: the law gives women the provision for filing virtual grievance via e-mail, or writing her grievance and sending it to police station from a registered postal address.
- IV. Right not to be arrested at night: unless there is an extravagant case on the orders of a first class magistrate, a woman cannot be arrested after sunset and before sunrise.
- V. Right to get free legal aid: under the legal services authorities act, female rape victims have the right to get free legal aid or help from the legal services authority who has to arrange a lawyer for her.
- VI. Right against domestic violence: section 498 of the Indian Constitution looks to safeguard a wife, female live in partner or a woman living in a family like a mother or a sister from domestic violence by the hands of a husband, male live in partner.
- VII. Right against workplace harassment: the Sexual Harassment of women at Workplace act gives a female the right to file a grievance against any kind of sexual harassment at her place of work.
- VIII. Right to dignity and decency: in an incident that the accused is a woman, any medical examination process on her must be performed by or in the visitation of another women.
- IX. Right to equal pay: according to the provision listed under the Equal Remuneration Act, one cannot be discriminated on the basis of sex when it comes to salary, pay or wages.

After the Independence, the educational rights of women were promoted and they were made aware of the value of education. The ratio of women pursuing higher studies and taking education improved gradually since then. The government give various benefits to women such as loan facilities, scholarship, etc. who wished to go out to pursue higher education.

Segregate schools and colleges have been established for women alone. Segregate universities have

been also which are among the decent universities today and admits the girls obtaining merit ranks.

- The Constitution ensure that no discrimination shall be made against any person on the basis of class, caste, sex, creed, race and place of birth [Article 15(1)]
- Article 243D(3) One-third reservation of women in the panchayats
- Article 243D(4) One-third reservation for women in the presidential posts of the panchayats
- Article 243(T)3 One-third reservation in Municipalities
- One-third reservation for women in the presidential posts of Town Municipalities
- Article 42 maternity benefits to women
- Article 16 providing employment opportunities

## Conclusion

It is concluded that changing the law on sexual offenses may be a knotty and sentient task, and more so, during a country like India, where there's a synchronous visitation of a varied. There's a requirement for substantial changes within the law on sexual offenses. Women's status in Indian society has primordially change since Independence. Government after realising the situations of women and their worse position in the society took giant goal to bring about a change and improve the social, economic and political conditions of women. In India, still a gradual change has been experienced by the women over these years.

" The day will come when man 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."

Rape is rape. Be it date rape, stranger rape or marital rape.