

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 6

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Marital Rape

VAISHALI YADAV¹ AND MADHU SINGH²

ABSTRACT

The term marital rape is used to define non-consensual acts performed by the victim spouse or ex-spouse. Marital rape is an issue that persist since ancient ages but remain in the background of domestic violence. It became evident with the increase in civilization. The victim of marital sexual abuse demonstrates medical and psychological problem following the incident. Among the problem vaginal and anal injuries, vaginal infection, nightmare stress disorder is among the psychological problems. Marital rape is still being ignored or considered normal some societies, which can discourage the victims report the assault victim usually don't report the incident because of their shame and dread of their spouses acquaintances. The protection of the victim and to sentence the perpetrators important in term of serving as example – ethics committee approval, informed consent, financial disclosure.

In legal field, active studies have been conducted in the last century the privacy of the issue, the small number of compliments, unsettled legislation these subjects to be one of the today's problem as a result of the studies carries out with 580 females in the university of Benin. The case Independent thought v. union of India is the landmark case concerning the issue of marital rape where supreme court has given the stern decision regarding the modesty of the women.

One of the accept of marital rape that resemblance of the other type of domestic violence is it recurrent feature. Women who were forced to marital intercourse repeatedly experience the same situation where as the repeated rape make marriage unbearable for women, the percentage of sexual abuse victim who report the abuse of judicial authorities is very low.

'Death with dignity is better than life with humiliation'

I. INTRODUCTION

The term marital rape is used to define non- consensual acts performed by the victim spouse or ex-spouse. Marital rape is an issue that persist since ancient ages but remain in the background of domestic violence. Violence is a coercive mechanism to assert one's will over

¹ Author is a student at Shambhunath Institute Of Law, Jhalwa, Prayagraj Uttar Pradesh, India.

² Author is a student at Shambhunath Institute Of Law, Jhalwa, Prayagraj Uttar Pradesh, India.

another, in order to prove a feel a sense of power. Violence is destruction, suffering or death, which is deliberately inflicted for the achievement of a purpose. Sexual violence is one if the most extreme and effective form of control in a male dominated society, which simultaneously damages and constraints women's lives and prompt individual and collective resistance among women thereby maintaining the status-quo of gender inequality, subjugation of women and their control.

Sexual violence describes the deliberate use of sex as a weapon to demonstrate power over and to inflict pain and humiliation upon, another human being. Rape must be understood as the gravest kind of sexual violence against women. Marital rape can be defined as any unwanted sexual intercourse or penetration vaginal, anal or oral obtained by force, threat of force, or when the wife does not consent. One of the very peculiar implication of the narrow and restricted definition of rape is that it cannot be committed against a particular set of women a woman cannot rape by her own husband.

Women are at particularly high risk for being raped, by their partner under the following circumstances-

- Unwanted pregnancy, miscarriage
- Women married to dominating men who view them as property.
- Women who are in physically violent relationship.

II. TYPES OF MARITAL RAPE

Forced only rape: The term forced only rape describe a husband who uses threats and violence only to the degree necessary to coerce sex. This type of rape usually occur in relationship were violence is predominately verbal, and or in relationship where violence occurs only in sexual interaction.

Battering rape: when beating and rape are combined, it's referred to as battering rape. The sexual abuse is part of the general pattern of psychological, verbal, emotional, economic and physical abuse. Often the rape occurs as the continuation of the physical assault. In some cases, the physical violence continued during sex and the sexual act is also violent.

Obsessive rape: the most openly sadistic form of rape is called obsessive rape. The abuser seems obsessed with sex, and the act itself is violent. In this relationship the abuser may use violence to become aroused.

III. THE INCIDENCE AND CAUSES

According to US sexual assault information sheet, one in seven women reported that they had been raped by their husbands. Rape in marriage is vastly unrecognized by the legal system all over the world. In majority of countries, criminal law can be invoked for assault in marriage for assault in marriage, but not for rape while countries like Australia, New Zealand and the United Kingdom, have change the law with regard to marital rape to allow a husband to be prosecuted for his raping his wife this is by way of rate exception and not the norm.

Marital rape is not a contradiction in terms rather a form violence against wives, which is not rare just rarely discussed. Women experience the violence by the husband in various ways, e.g some are battered during the sexual violence or the rape may follow a physically violent episode when the husband wants to make up and coerces his wife to have sex against her will. Wife rape does not occur in a vacuum, but it is one of the consequences of the unequal power relationship between husband and the wife.

The composition picture of the husband rapist reveals jealous, domineering individual who feel a sense of entitlement to have sex with their property wife on whom anger, depression, frustration can be taken out and dominance and coercion can be exercised all in a permissible legal sphere. Marital rape is most likely to occur in a relationship characterized by other form of violence or abusive situation. This has led many researchers argue that marital rape is just on extension of domestic violence.

IV. CONSEQUENCES OF THE MARITAL RAPE

Marital rape is a huge fallacy that after married rape is less serious than other rapes and sexual violence. There are many physical consequences that may accompany marital rape-

- Physical effect on body are like injuries to the vaginal and anal areas, fatigue, torn muscles.
- Gynecological effects include unwanted pregnancy which leads to abortion, miscarriage, bladder infections.
- Short term psychological effect include shock, intense fear.

Facts and statistics

- Fourteen percent of married women report they were raped by their spouse. This percentage probably underestimates the true prevalence of marital rape.

- Marital rape is not always a part of battered women syndrome. However, at least half of all battered women are also survivor of marital rape.
- A national survey found 10 percent of all sexual assault cases reported by women involved a husband or ex-husband attacker.
- Adult female survivors of marital rape are in a higher percentage bracket to have been sexually molested as children.

V. THE FOREIGN LAW ON MARITAL LAW

In United Kingdom, the legal position is prescribed under sexual offences act, 2003. Despite the elaborate provision of then act dealing with sexual abuse etc., the legislation recognizes marital exemption. In its chapter “familial child offences”. If a lawful marriage exists between the parties, the sexual activity with a child family member will be no offense in the eyes of law.

A plethora of judicial decisions do exist which make the decision do exist which make the situation better than Indian law. A man could not be convicted of raping his own wife during the subsistence of marriage because she was deemed to have given consent for marital intercourse under all circumstances.

In United States, the federal criminal code, 1986 makes use a distinction between aggravated sexual abuse and sexual abuse, depending upon the use of force or the degree of fear or the degree of fear generated by the offender. The code recognizes the defense of marital status in a case of sexual abuse of a minor or ward. Whereas in case of aggravated sexual abuse, the defense marriage is not recognized marital rape as offense by the year 1993, but the classification of the offense and the punishment for it varies under different state laws. In nearly 33 states, there are still some exemption given to husband from rape prosecution, when the wife is most vulnerable and is legally unable to consent. The perpetuate marital rape by conveying the message that marital sexual violence is less reprehensible than other types of rapes.

VI. CONCLUSION

Marital rape is one of the worst types of sexual violence occurring at the level of family. Due to the nature of the activity and the associated issues of privacy of relationship, internalization of patriarchal subjugation and most of the times, because of their economic dependency, the women victims don't come forward with their suffering. The patriarchal mind set has led the law to close its eyes to the plightful misery of the abused wives and the

law does not even recognize marital rape as an offense leave aside providing any penalties in such cases.

The supreme court has recognized rape of a minor wife in a very loud terms and had delivered a landmark judgement suggesting the legislative formula to make child marriage void ab-initio. But the major wives have not been able to win the judicial sympathy so as to get marital rape recognized by the apex judiciary. The narrow and restrictive definition of rape, which allow for the marital rape, a hollow statement, which provides escape-route for many perpetrators of sexual violence and the quest for the justice remains unquenched.
