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Editor In chief – Assistant Professor Mr. Janmejay Singh

Publisher & Founder – Vaibhav Sangam Mishra

Frequency – Quarterly (4 Issue Per year)

ISSN : 2583-6323 (Online)

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MARITAL RAPE: UNDERSTANDING CONSENT WITHIN MARRIAGE.

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ABSTRACT:

Marriage is often seen as a beautiful bond between two people who love and care for each other. It's a commitment to support each other through the ups and downs of life. But within this sacred institution, a dark and troubling issue exists – marital rape. In this article, we will explore the painful reality of marital rape, why it's deeply wrong, and how we can work together to combat it.

DEFINING MARITAL RAPE:

Marital rape is a deeply distressing and harmful act that occurs within the bounds of marriage. It happens when one spouse forces the other to engage in sexual activity against their will or without their clear and voluntary consent. In simpler terms, it's when one partner in a marriage uses physical force, emotional pressure, or any form of coercion to make the other person have sex when they do not want to. This is a severe violation of personal boundaries and individual rights. It is essential to understand that consent is the key element in any sexual relationship, including marriage.¹ Consent means that both individuals willingly agree to participate in sexual activities. It should be given freely, without any pressure or threats. In the case of marital rape, consent is absent. It's important to emphasize that marriage does not imply automatic or perpetual consent for sexual activity. No one should be forced to have sex, even within a marriage. Everyone, regardless of their marital status, has the right to say "NO" to sexual activity if they are not comfortable or willing to engage in it. Marital rape can take various forms, including physical violence, emotional manipulation, or threats of harm. In some cases,² it may involve sexual acts that cause physical pain or injury to the victim. The consequences

¹ Equalitynow, https://www.equalitynow.org/news_and_insights/a-ruling-on-marital-rape-in-india-is-coming-up-heres-why-you-should-be-watching-closely/#:~:text=Defining%20marital%20rape,is%20unable%20to%20give%20consent., (last seen 5 September 2023)

² Rao TSS, Banerjee D, Sawant NS, Narayan CL, Tandon A, Manohar S, Rao SS. Forensic and Legal Aspects of Sexuality, Sexual Offences, Sexual Dysfunctions, and Disorders. *Indian J Psychiatry*. 2022 Mar;64(Suppl 1):S108-S129. doi: 10.4103/indianjpsychiatry.indianjpsychiatry_59_21. Epub 2022 Mar 22. PMID: 35599655; PMCID: PMC9122145.

of marital rape go beyond physical harm; survivors often suffer from emotional trauma and may experience feelings of fear, shame, and guilt³

Addressing marital rape requires recognizing that it is a serious crime and a violation of human rights. Laws and regulations are being developed in many places to criminalize and punish marital rape, holding the perpetrators accountable for their actions.⁴ Additionally, cultural norms and misconceptions surrounding marriage and consent must be challenged to create a society where every individual's right to autonomy and safety is respected, regardless of their marital status.

WHY MARITAL RAPE IS WRONG?

Marital rape is a deeply troubling and morally reprehensible act because it infringes upon fundamental principles of consent, respect, and human rights. In this discussion, we will elaborate on why marital rape is wrong and how it constitutes a violation of human rights.⁵

1. **Consent Matters:** Consent is the cornerstone of any healthy sexual relationship. It means that both partners willingly and enthusiastically agree to engage in sexual activity. Marital rape stands in direct opposition to this principle. It occurs when one spouse coerces or forces the other into sexual acts without their clear and voluntary consent. Consent must always be freely given, and every individual, regardless of their marital status, has the unequivocal right to say "no" to any sexual activity they do not wish to engage in. Marital rape disregards this basic human right.⁶
2. **Respect in Marriage:** Marriage is commonly perceived as a sacred bond built on love, trust, and mutual respect. Marital rape, however, undermines the very essence of this sacred institution. It involves one spouse betraying the trust and respect that should define a marriage by using physical force, emotional manipulation, or coercion to engage in sexual acts against the will of the other. This breach of trust and respect is

³ Legal service india, <https://www.legalserviceindia.com/legal/article-3759-marital-rape-current-legal-scenario-in-india-in-comparison-to-the-world.html#:~:text=Section%20375%20of%20the%20IPC,married%20woman%20by%20her%20husband>. (last seen 5 September 2023)

⁴ Gnanaganga, <http://gnanaganga.inflibnet.ac.in/bitstream/123456789/523/1/Charulata%20Yewale.pdf>, (last seen 5 September 2023)

⁵ Independent Thought versus Union of India and Anr.

⁶ Thehindu, <https://www.thehindu.com/opinion/editorial/the-importance-of-consent-the-hindu-editorial-on-marital-rape/article65407305.ece>, (last seen 5 September 2023).

not only morally indefensible but also deeply damaging to the survivor and the marriage itself.⁷

3. **Physical and Emotional Harm:** Marital rape has grave physical and emotional consequences. Survivors often endure physical pain, injury, and emotional trauma that can persist long after the traumatic incident. The physical harm can range from bruises and injuries to severe health consequences, while the emotional scars can lead to anxiety, depression, and lasting psychological distress. These consequences are not only detrimental to the survivor's well-being but also hinder their ability to lead a healthy and fulfilling life.
4. **Violation of Human Rights:** Perhaps the most critical aspect of why marital rape is wrong lies in its blatant violation of human rights. Every individual, irrespective of their marital status, possesses inherent human rights that must be upheld and protected. Among these rights is the right to personal autonomy and bodily integrity. Marital rape directly infringes upon these fundamental rights by denying one spouse the agency to make decisions about their own body and sexual activities. It robs individuals of their dignity and the freedom to live free from harm

LEGAL PERSPECTIVES:

Legal perspectives on marital rape and consent within marriage have evolved significantly over time. In the past, many legal systems did not criminalize marital rape, as marriage was often seen as implied consent for sexual activity. However, modern legal frameworks have undergone important changes.⁸⁹ Today, numerous countries have reformed their laws to address marital rape explicitly. These changes recognize that marriage does not grant perpetual consent to sexual intercourse. Instead, consent must be freely given by both spouses. This shift reflects a growing understanding of individual rights and bodily autonomy. In the eyes of the law, the principles of consent within marriage are akin to those outside of marriage. Consent should be voluntary, informed, and enthusiastic. This means that both partners must willingly agree to engage in sexual activity without any form of coercion or pressure. Failure to obtain

⁷ Abhikriti Singh, MARITAL RAPE – THE DARK SIDE OF HOLY MATRIMONY, knowlaw, (Aug. 27, 2023, 9:29 AM), <https://knowlaw.in/index.php/2021/01/12/marital-rape/>

⁸ Abhyankar, K., & Datta, A. (2022). Marital Rape: Legal Status and Development. *Journal of Victimology and Victim Justice*, 5(1), 71–79. <https://doi.org/10.1177/25166069221117191>.

⁹ BENNICIE, J. A., & RESICK, P. A. (2003). MARITAL RAPE: History, Research, and Practice. *Trauma, Violence & Abuse*, 4(3), jstor, 228–246. <http://www.jstor.org/stable/26636357>

consent within a marriage can result in criminal charges, similar to how it would outside of marriage. Victims of marital rape now have the same legal rights as victims of any other form of sexual assault. They can report the crime, seek protection, and pursue justice through legal channels.

It's important to note that laws regarding marital rape and consent may vary from one jurisdiction to another. It's crucial to be aware of the specific laws and regulations in your region to fully understand the legal perspectives on this matter.¹⁰ These legal changes aim to uphold the rights and safety of individuals within their marriages and relationships, emphasizing the importance of mutual respect and consent in all sexual encounters.

CHALLENGING CULTURAL NORMS:

Challenging cultural norms is a vital process of questioning and evaluating long-standing beliefs, practices, and behaviors within a society. Cultural norms are like the unwritten rules that shape our lives, guiding our actions and interactions with others. While many of these norms help create a sense of identity and cohesion within a culture, some can perpetuate inequality, discrimination, or harm. Challenging these norms is about recognizing when they no longer serve the best interests of individuals or society and advocating for change.

One crucial aspect of challenging cultural norms is promoting gender equality. Across many cultures, gender norms have traditionally dictated what is considered appropriate behavior for men and women.¹¹ For example, some societies expect men to be strong and unemotional while women are supposed to be nurturing and submissive. Challenging these norms involves questioning these stereotypes and advocating for equal opportunities and treatment for people of all genders. It means breaking down the barriers that limit women's access to education, employment, and leadership positions and empowering men to express their emotions and take on caregiving roles without fear of judgment. By challenging gender norms, we create a more inclusive and equitable society where everyone can reach their full potential, regardless of their gender identity.

Another area where challenging cultural norms is crucial is in addressing racial and ethnic bias. Many cultural norms contain implicit biases against certain racial or ethnic groups, leading to

¹⁰ Pdwivedi, Marital Rape Law: Is It Really Required?, legalserviceindia, (Aug. 27, 2023, 9:29 AM), <https://www.legalserviceindia.com/legal/article-7756-marital-rape-law-is-it-really-required-.html>

¹¹ opentextbc, <https://opentextbc.ca/introductiontosociology/chapter/chapter3-culture/>, (last visited Aug. 21, 2023).

discrimination, inequality, and social injustice. Challenging these norms involves promoting diversity, equity, and inclusivity. It means acknowledging the beauty and value of cultural differences while actively combating racism and prejudice. It involves changing the narrative from one of exclusion and division to one of unity and understanding. By challenging racial and ethnic biases embedded in cultural norms, we can work towards a more harmonious and just society where individuals are judged by their character, not their skin color or ethnicity.

Religious freedom is another aspect that may require challenging cultural norms. Some societies enforce strict religious norms, limiting individuals' freedom to practice their faith as they see fit. Challenging these norms means advocating for religious freedom and tolerance. It involves respecting each person's right to believe or not believe in a higher power and to practice their religion without fear of discrimination or persecution. It's about fostering an environment where individuals of all faiths or belief systems can coexist peacefully, respecting each other's choices and beliefs.

Environmental awareness and sustainability also play a crucial role in challenging cultural norms. Some cultures have norms that encourage excessive consumption and disregard for the environment. Challenging these norms involves promoting sustainable practices, reducing waste, and conserving resources. It means redefining success and well-being to prioritize a healthy planet for current and future generations. By challenging cultural norms that harm the environment, we can work towards a more sustainable and ecologically responsible world.

MARITAL RAPE LAW IN INDIA:

In India, the law on marital rape is complex. Unlike many other countries, India does not have a specific law that explicitly criminalizes marital rape. This means that, under the current legal framework, forced sexual intercourse by a husband with his wife is not automatically considered rape.

However, it's essential to understand that this legal gap has been a subject of debate and criticism. Many activists and organizations argue that the law should change to explicitly criminalize marital rape to protect the rights and dignity of all individuals, regardless of their marital status. Currently, laws related to sexual assault and cruelty can be used to address some forms of marital rape, but they don't comprehensively cover all instances. The absence of a specific law addressing marital rape is a contentious issue in India, and discussions about legal reform in this area continue. The Delhi High Court has been hearing arguments in the case

since 2015 but in January two Judges of the Delhi High Court started to hear petitions filed by individuals and civil society organizations challenging the exemption and by May 2022, they arrived at a controversial split verdict. One judge was in favor of criminalizing marital rape as it violated a woman's right to consent, while the other was against it, saying marriage "necessarily" implied consent the matter was pushed to the Supreme Court of India, and in September 2022, Supreme Court gave judgment by ruling on Women right to safe abortions regardless of marital status held that for the purpose of the Medical Termination of Pregnancy Act, the definition of rape should include marital rape¹²

- **Section 375 - Rape:** Section 375 of the IPC defines the offense of rape. It states that a man is said to have committed rape if he engages in sexual intercourse with a woman without her consent or against her will. However, an exception exists in this section which states that sexual intercourse by a man with his own wife, as long as the wife is not under 15 years of age, is not considered rape. This exception has been a subject of debate and criticism¹³
- **Section 498-A - Cruelty by Husband or Relatives of Husband:** Section 498-A primarily deals with cruelty by a husband or his relatives towards the wife. While this section may not specifically address marital rape, it can be invoked in cases where sexual violence is accompanied by other forms of cruelty or harassment against the wife within the marriage.¹⁴
- **Section 377 - Unnatural Offenses:** Section 377, although historically used to criminalize consensual homosexual acts, has undergone legal changes. However, it can still be invoked in cases of unnatural sexual acts within a marriage, such as non-consensual anal or oral sex, if such acts are forced upon one spouse against their will.¹⁵

CONCLUSION:

Marital rape is a deeply distressing issue that demands urgent attention and action. Throughout this discussion, we've explored why marital rape is morally and legally wrong, the absence of specific laws against it in some countries, the importance of challenging cultural norms that

¹² Drishti IAS, <https://www.drishtiiias.com/daily-updates/daily-news-analysis/marital-rape-in-india-1>, (last visited September 5, 2023)

¹³ The Indian Penal Code, 1860, Sec. 375, No. 45, Acts of Parliament, 1860 (India).

¹⁴ The Indian Penal Code, 1860, Sec. 498A, No. 45, Acts of Parliament, 1860 (India).

¹⁵ The Indian Penal Code, 1860, Sec. 377, No. 45, Acts of Parliament, 1860 (India).

perpetuate it, supporting survivors, and the significance of education to change societal attitudes. Marital rape is wrong because it disregards the fundamental principles of consent, respect, and human rights. Consent should always be freely given, and nobody should ever be coerced or forced into sexual activity, regardless of their marital status. It's a breach of trust, respect, and the very essence of a loving relationship.

Recognizing marital rape as a violation of human rights is essential. Everyone has the right to live free from harm and to control their own body, even within marriage. This violation robs individuals of their dignity and autonomy.

While legal frameworks vary, progress is being made in many places to acknowledge marital rape as a crime. Advocates, organizations, and concerned citizens are pushing for legal reforms and raising awareness about this issue. Challenging cultural norms that normalize or trivialize marital rape is equally crucial. Society must understand that consent is paramount, irrespective of marital bonds. Supporting survivors is essential. They should not be blamed or shamed; instead, they should receive the help they need to heal and seek justice. Safe shelters, counseling, and legal assistance can make a significant difference in their recovery. Education is a powerful tool for change. Comprehensive sex education that includes discussions about consent and healthy relationships can shape future generations. By teaching respect and equality from an early age, we can create a society that values these principles within marriages and all relationships. Addressing marital rape requires a multifaceted approach. Legal reforms, cultural shifts, survivor support, and educational initiatives are all vital components of a comprehensive strategy to combat marital rape and promote consent within marriage. Together, we can work toward a world where everyone is safe, respected, and free from the horrors of sexual violence within marriage. This is not just a call to action; it's a call to justice, equality, and compassion for all.