

## MARITAL RAPE IN INDIA

**-NIKITA PAREEK<sup>1</sup>**

### INTRODUCTION

Marital rape is also known as spouse rape without the consent of spouse. It is a form of partner rape of domestic violence , harassment and of sexual abuse.

The total number of rapes appeared to NFHS, 97.7% rapes were committed by the people out of which the account of marital rape was 2/3<sup>rd</sup>. UN study has established the facts that 75% married men's want their wives to agree to sex at any cost. There have been many heart wrenching stories of women raped every night, even during pregnancy and childbirth. Marital rape is a physical as well as mental trauma to the victim .

Specially in the villages , where the women's are illiterate and they have a belief that it's her duty towards her husband and she agrees to all the violence which was done by her own husband. Basically it's an a common trend performed by the men's towards her wives. With respect to this we use to hear or see many such cases which were happening on every next door . where the consent of women's has not given priority during the physical intercourse. There are many other cases where have seen that the married women's get raped from another person and the accused knows the fact that the women is married . Basically such rapes are based on some evil motive in the mind of accused and he wants to proves his superiority , his anger , his ego or anything else.

Despite the historical myth that rape by one's partner is a relatively negligible event causing little trauma, research indicates that marital rape often has very frightful and long-lasting consequences for women. The physical effects of marital rape may include many problems to private organs, lacerations, soreness, bruising, torn muscles, tiredness, vomiting etc. Women who have been battered and raped by their male partner may suffer other physical consequences including broken bones, black eyes, nose bleeding , and knife wounds that occur during the sexual violence. In accordance with this , gynecological consequences of marital rape include

---

<sup>1</sup> Student B.A LL.B 3<sup>rd</sup> Year S.S. Jain Subodh law college Jaipur Rajasthan

bladder infections, infertility and the potential contraction of sexually transmitted diseases including HIV etc.

Women who are raped by their partners are likely to suffer serious psychological consequences as well. Some of the short-term effects of marital rape include anxiety, torn muscles, shock, intense fear, depression, suicidal ideation, and post-traumatic stress. Long-term effects often include disordered eating, sleep problems, tiredness, depression, and problems in establishing trusting relationships, and increased negative feelings about themselves, and mental disorder as well. Psychological effects are likely to be long-lasting. Some marital rape survivors report hallucination, sexual dysfunction, and emotional pain for years after the violence. And many such problems in their daily life.

### **Reasons for the Marital Rapes in India**

The reasons of marital rape can be many such as sexual activities of husband; desire to assert superiority of men over women; petty domestic issues; attempt of women to demand her right in marital relationship etc. Thus, in essence, the main reason of this marital menace is wide spread gender inequality prevailing in our society. It is another aspect of our male-dominated society, system of social norms where women either married or un-married do not have equal rights in comparison to males. It is another gun in the hands of man to exploit and subjugate women.

Another reason is the absence of legal provisions recognizing marital rape as an offence; which encourages the man to continue with his behavior and leaves the wife with no remedy.

One of the very famous and heart wrenching case of “BHANWARI DEVI”-

In this case there were 5 accused and they have done gang rape to the victim Bhanwridevi on date 22 sep 1992 . we can say that the women is very brave and Her job involved going door-to-door in the village, campaigning against social ills - she would tell women about hygiene, family planning, the benefits of sending their daughters to school for the education, and she would discourage female foeticide, infanticide, dowry and child marriages. In the state of Rajasthan it is a huge tradition of child marriages and thousands of children, many just months

old, are married off every year and it was like a trend in those days. Bhanwari Devi herself was a child bride and she is totally against of this tradition of child marriage.

With respect to this , in Bhatari village, 50km (about 30 miles) from the state capital, Jaipur. It was dusk. Her husband and Bhanwaridevi were working in their fields when they started beating him up with sticks. There were five of them .<sup>2</sup>

She ran to help her husband, pleading with the men to show some mercy, but two of the attackers pinned him down,

While the remaining three of them took turns to rape her. The men were angry with her for trying to prevent a nine-month-old Gujjar girl's [child marriage] wedding a few months earlier. The family accused her of demeaning them, and still managed to marry off the baby the next day - then seething with anger, they came after Bhanwari Devi. When she went public with her complaint, her attackers denied rape and said there had only been a arguments. The police didn't take her complaint seriously and botched up the investigation. The medical test which was conducted 52 hours later when it should have been done within 24 hours, her scratches and bruises were not recorded, her complaints of physical discomfort were ignored by the police.

The five accused were finally arrested more than a year after the crime, and were charged with harassment, assault, conspiracy of silence and gang rape. Thus ,While denying them bail in December 1993 in this case , Rajasthan high court „Judge NM Tibrewal“ wrote in his order: "I am convinced that Bhanwari Devi was gang-raped in revenge for attempting to stop the child marriage of [one of the accused] Ramkaran's daughter, a minor."

In 1997, the court came out withVishakhaGuidelines, laying down norms and valid judgment“s related to protect women from sexual harassment in workplaces. "It was an epic judgment based on the fundamental rights of women. It was her case that resulted in the Indian Supreme Court formulating guidelines to deal with sexual harassment in the workplace, but her attackers remain

---

<sup>2</sup>[www.bbc.com/hindi/india-39299355](http://www.bbc.com/hindi/india-39299355)

free, free from rape charges by the trial court even her appeal has been heard just once in the high court over the past 22 years. In the interim, two of the accused have died.

The state government, which seemed unwilling to appeal against the order which came from lower court, finally challenged it in the Rajasthan high court, but only one hearing has been held in 22 years . **But still the justice is not allotted to her and she is continues to live in the same village, still carrying on her work as a saathin, and still hoping for justice.**

„This married brave women is still fighting for the justice in the age of 58 [approx.]“ Such gang rapes describes the worse situation of our country and shame on these accused and their shameful mentality who considers more superior to himself in from of victim „,

Rape cases in the country -India increased by 3.6 percent to 22,172 in year of 2010 from 21,397 cases the previous year, according to figures collected from the National Crime Records Bureau.

### **SHAMEFUL CONDITION IN INDIA**

“The husband cannot be guilty of such rapes, harassment, and mental torture committed by himself upon his lawful wife, by their mutual matrimonial consent and contract; the wife hath given herself in kind unto the husband, whom she cannot renounce.”

Once married, a women could not have the right to refuse sex with her husband. This allows husbands rights of sexual access over their wives in direct dispute in relation to the principles of human rights and provides husbands with a license to rape; to their wives. Only two groups of married women are covered by the law making of rape, of those being under 15 years of age and those who are separated from their husbands. While the rape of a girl below 18 years of age may be punished with rigorous imprisonment for a period of 10 years or more under the POCSO ACT. Some progress in the law towards criminalizing domestic violence against the wife took place in 1983 when Section 376-A was added in the Indian Penal Code 1860, which criminalized the rape of a judicially separated wife.<sup>3</sup>

---

<sup>3</sup> [www.bartleby.com](http://www.bartleby.com) › Writing

**Constitutional safeguards to women**

The Constitution of India grants equality to women and also empowers the State to take various measures of positive discrimination in favor of women for neutralizing the education and political disadvantages faced by them.

Fundamental Rights, among others, ensure equality before the law and equal protection of the law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. **Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42** of the Constitution are of specific importance in this regard.<sup>4</sup>

**Legal provisions**

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.

- (1) The Crimes Identified Under the Indian Penal Code (IPC)
  - (i) Rape (Sec. 376 IPC)
  - (ii) Kidnapping & Abduction for different purposes ( Sec. 363-373)
  - (iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
  - (iv) Torture, both mental and physical (Sec. 498-A IPC)
  - (v) Molestation (Sec. 354 IPC)

---

<sup>4</sup>[www.academia.edu/Documents/in/Marital\\_Rape](http://www.academia.edu/Documents/in/Marital_Rape)

(vi) Sexual Harassment (Sec. 509 IPC)

(vii) Importation of girls (up to 21 years of age) (2) The Crimes identified under the Special Laws (SLL)

### **Conclusion**

Even considering all the safeguards given by the constitution of India but still we won't find any major difference in the increasing ratio of marital rapes in India. Unfortunately, the marital rapes, gang rapes, sexual harassments, assault, and domestic violence and these practices are still increasing like a trend in male dominating societies. And there are many factors in our Indian society which makes women, make her realize that she is the weakest. One of the main issues in the villages is - Economic dependence on her husband and in-laws is the reason that married women are unable to protect her from such practices of marital rape and she is forced to bear it.

### **Suggestions for reform In light of the above discussion following suggestions are made:**

1. Marital rape should be recognized by Parliament as an offence under the Indian Penal Code.
2. The punishment for marital rape should be the same as the one prescribed for rape under Section 376 of the Indian Penal Code.
3. The wife should have an option of getting a decree of divorce if the charge of marital rape is proved against her husband. Though a case of marital rape may fall under cruelty or rape as a ground of divorce, it is advisable to have the legal position clarified.
4. Demand for divorce may be an option for the wife, but if the wife does not want to resort to divorce and wants to continue with the marriage then the marriage should be allowed to continue.
5. Corresponding changes in the matrimonial laws should be made.

Without any specific legal provision in place it is almost impossible to stop this trend of marital rape. Victims of this moral crime have no such effective remedy. Perhaps the last resort is only

the judiciary. Judiciary of our country has certain liberty which it can use to recognize marital rape and a serious moral and ethical crime liable for strict punishment mentioned in our constitution. Such positive acts by the law as well as society would give married women a sense of security and provide them with a proper remedy in case of marital rape .The concept of right to equality [In the constitution of india] enshrined in our constitution will remain as a dead letter if women of our country will not have any right over her own body and will not have any option of exercising their own choices and her rights as far as sexual relationship in marriage is concerned.