

LETTER TO EDITOR

Silent Trauma: Unraveling the Legal Silence on Marital Rape in IndiaChatterjee P,¹ Roy RN.²

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Dear Editors,

This article sheds light on the severe mental trauma caused by marital rape, emphasizing the continued silence of the law on this issue, indicative of entrenched patriarchal norms. Despite the Justice J. S. Verma Committee's recommendation to amend the Rape Law and include Marital Rape as a crime under Section 375 of the IPC, no such changes have been made, neither in the Bharatiya Nyaya Sanhita, 2023. The only alteration introduced by the BNS is the age-related provision in Exception 2 of Section 63, stating that sexual acts with a wife not under eighteen years of age will not be considered rape. Marital rape is not a crime in India. The consent of a wife is not required by her husband if her age is over 18 years. This implies that forced sexual intercourse by a husband is considered a legal right. However, the law is silent on three crucial aspects: 1) the legal rights and remedies available to a wife, 2) her free consent for sexual intercourse with her husband, and 3) the mental or physical trauma experienced by a wife who has suffered from such acts within the four walls of the bedroom.

Around 14% of married women in the United States face marital rape, with 77% of these cases going unreported. The aftermath includes post-traumatic stress disorder (PTSD), depression, heightened anger, fear, and guilt, leading to a negative impact on self-esteem and resentment towards their bodies. Despite the belief that prior consent in marriage lessens the impact, victims of marital rape experience more profound and enduring psychological consequences than those assaulted by strangers.¹ The majority of sexual violence in India takes place within marital relationships; however, it is believed that only around 10% of individuals who experience spousal sexual abuse come forward to report such incidents.²

Moreover, women who fall victim to spousal sexual abuse frequently endure various forms of Intimate Partner Violence, encompassing physical, emotional, and psychological abuse. Consequently, they bear a notably heavy burden of exposure and psychiatric risk. This aspect has been disregarded by lawmakers for an extended period. Numerous studies indicate that the absence of appropriate laws often deters women from reporting these crimes occurring within the confines of their homes. As per

the second exemption in Section 63 of The Bharatiya Nyaya Sanhita, 2023 states that sexual intercourse or sexual acts between a man and his wife, provided that the wife is not under eighteen years of age, are not considered rape. Thus law makers have left no scope for women above 18 years to file case against her husband.

Several married women reported experiencing sexual violence, encompassing forced acts, threats, and, in rare instances, forced prostitution. Instances of sexual harassment were prevalent in both their family and marital homes, involving vulgar language, marital rape, and incest. The impact of domestic violence on their health was substantial, with some women exhibiting signs of severe depression. Additionally, a few women reported sleeping disorders due to the fear of sexual assault by their partners. Suicidal thoughts were reported by some victims.²

One can observe a noticeable increase in cases of wife swapping in India, representing another form of crime against marriage. However, it's important to note that not all instances are reported and brought to public attention. Only a few cases have been reported and highlighted. As for these cases also directly, we don't have any provisions in our law.³ Many women stay silent about sexual violence due to societal judgment and financial dependence on their husbands. It's crucial to address this medico-legal issue promptly, by involving legal and medical experts to provide remedies for victims.

References:

1. Jacob J. Why a wife-swapping case has shocked Kerala. India Today 2022. <https://www.indiatoday.in/india-today-insight/story/why-a-wife-swapping-case-has-shocked-kerala-1898792-2022-01-11>.
2. Agarwal N, Abdalla SM, Cohen GH. Marital rape and its impact on the mental health of women in India: A systematic review. PLOS Global Public Health 2022;2:e0000601. <https://doi.org/10.1371/journal.pgph.0000601>.
3. Victorio B. The Effects of Marital Rape on a Woman's Mental Health. SJSU ScholarWorks n.d. <https://scholarworks.sjsu.edu/themis/vol11/iss2/4>.

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