



ISSUES AND CHALLENGES IN CRIMINALIZATION OF MARITAL RAPE IN INDIA: EMPIRICAL RESEARCH

Community Medicine

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ABSTRACT

Rape is the most brutal attack that can be inflicted upon virginity, youth, motherhood and womanhood itself. The supreme court of India has very clearly stated that rape is a deathless shame and the gravest crime against the humanity. In spite of that, the law and criminal justice system generally do not recognize forceful sexual intercourse between spouse occurring in the family as a separate crime. Objective of this research was to study various issues and challenges in criminalization of marital rape in India. In this empirical research, 93.8% participants were heard about marital rape. Patriarchy, sacred institution of marriage, economic factors were found big challenges in criminalization. According to the constitution it's a responsibility of a nation to treat their citizens equally and also to protect all rights of them. On serious note marital rape should be criminalized either inclusion in section 375 or create a separate section.

KEYWORDS

Marital rape, Criminalization, Challenges, Issues

INTRODUCTION:

India has different type of culture, customs, rituals and moral values and peoples are connected with them emotionally and spiritually. Marriage is one of them and it's considered as a sacred institution. Institution of marriage gives permission to a male and a female to live together under customary and statutory law. According to ancient Hindu law, marriage is the last of ten sacraments. The purpose of marriage is to enable a man and a woman performs religious duties and social permission to have children implying the right to sexual relations (1). Islam unlike other religion is a strong advocate of marriage. Marriage acts as an outlet for sexual needs & regulates it so one doesn't become slave to his/her desires. Furthermore, marriage is the only legitimate or halal way to indulge in intimacy between a man and woman. Unlike Hindu where the marriage is a sacrament, marriages in Muslims have a nature of civil contract (2). Whatever religion is, in marriage both men and women are equal. In Islam, marriage is a civil contract while in Hindu religion, during *Saptapadi* some promises are taken by both men and women. It's a duty of men to give due respect to the dignity of wife. Now question arise if marriage is a sacred institution and females are like goddess, why they have no right to refuse for sex with her husband. While on other hand, marriage gives right to the husband to have sex with his wife forcefully. It is a debatable question in India in present scenario.

The law and criminal justice system generally do not recognize forceful sexual intercourse between spouse occurring in the family as a separate crime, hence such cases are rarely reported as a complaint and if women try to report these issues, then their voice is suppressed by the people for the sake of so-called honor or image of the family, so the women have no option, but to suffer in silence. Recently when the bill to criminalize marital rape was introduced in India, it was turned down in parliament. Again, reason was given by some people that marriage is a sacred institution and touching it will lead to breakdown of marriages. Another important factor, patriarchy also prevalent in India. Due to patriarchy women have no permission to work outside home, only men can earn. Women have no right to take their own decisions. According to National family Health Survey IV (NFHS IV), in India only 31% of currently married women age 15-49 are employed in comparison with 98% of men. 16% of employed women are not paid for the work do. Among employed only 21% women make decisions alone on how their case earnings are used (3). Women are the subservient and the property of men in this patriarchal society. Therefore, sex without consent of wife is no big issue for concern.

The supreme court of India has very clearly stated that rape is a deathless shame and the gravest crime against the humanity. Rape is the most brutal attack that can be inflicted upon virginity, youth, motherhood and womanhood itself. Rape literally means a forcible seizure. It means the ravishment of women against her will or without her consent or with her consent obtained by force, fear or fraud or the

carnal knowledge of a women by force against her will (4). The term 'marital rape' (also referred to as 'spousal rape') refers to unwanted intercourse by a man on his wife obtained by force, threat of force or physical violence or when she is unable to give consent. The words 'unwanted intercourse' refers to all sorts of penetration (whether anal, vaginal or oral) perpetrated against her will or without her consent. Considered as the violence of perversion by her own husband against his wife amounting to physical and sexual abuse (5).

OBJECTIVE: To study various issues and challenges in criminalization of marital rape in India.

Research methodology:

The present study was based on doctrinal method of research. The researcher has drawn help from various reports, conventions, articles, books, newspapers commissions and judicial decisions. Empirical quantitative research was also done by the help of online survey. Research was cross-sectional in design conducted in month of April, 2020. All individuals aged 10 and older were included in the study. Basically, adolescence and adult age group were included. Sample size in the present study was calculated statistically on the basis of assumption that the probability of having good knowledge and perception about marital rape was 50.0%, because there were no similar studies related to marital rape knowledge and perception. Accordingly, the survey portal was closed, and interviews stopped at the end of the day when the number of participants exceeded the sample size (385). Total responses were 417 at the end of data collection.

The study questionnaire was designed in English. Questionnaire included general information like age, gender, marital status etc. and questions related to knowledge and perception regarding marital rape. By the help of online portal, Google form was created, link was shared on social networking sites. Participants were invited to complete and submit the form. Some participants were also helped in filling forms telephonically. Frequencies of data were presented in the form of tables and graphs. Data was analyzed with the help of excel.

Results of empirical research: Total 417 participants were filled the form. Initial data was related to general information of participants and then knowledge and perception regarding marital rape.

Table-1 Demographic details of respondents

Variable		Frequency	Percent (%)
Sex	Female	223	53.5
	Male	194	46.5
Age group	10-19	27	6
	20-29	365	88
	30-39	24	6

	40-49	1	0
Education	High School	12	3
	Intermediate	58	14
	Under Graduate	229	55
	Post Graduate	110	26
	Doctorate	8	2
Stream	Law	82	
	Technology	119	
	Medical	54	
	Science	18	
	Art	52	
	Management and hospitality	18	
	Social science/ Humanity	60	
	Others	23	
Employment status	Self employed	28	7
	Private employed	83	20
	Government employed	46	11
	Not employed/Students	260	62
Marital status	Unmarried	382	92
	Married	34	8
	Divorced	1	0

In the study 53.5% were females and the remaining 194 (46.5%) were males. Majority of them 365 (88%) belonged to 20-29 age group. Participants belonged to age group 10-19 (27) and 30-39 (24) were almost equal. that majority of respondents were graduate 229 (55%) followed by post graduate 110 (26%) and intermediate 58 (14%). 119 participants were of technology stream, 82 belonged to law, 60 belonged to social science/humanity, 54 of medical and 52 belonged to art stream. 28 respondents were self-employed. Out of 417 respondents 382 (92%) were married, 34 (8%) unmarried and 1 divorced. (Table 1)

Table- 2 Knowledge about marital rape among respondents

Questions related to knowledge		Frequency	Percentage (%)
Have you heard about term 'Marital Rape'	Yes	391	93.8
	No	26	6.2
Source of information*	Friends and family	136	32.61
	Television/Radio /FM	196	47.00
	Newspaper/Magazine	214	51.31
	Books/Institute	21	5.15
	Social media/Internet	285	68.42
What is marital rape	Any unwanted sexual intercourse by husband when wife does not give consent	383	91.8
	Any unwanted sexual intercourse by men when women does not give consent	34	8.2

* Multiple responses

Out of 417 respondents 391 (93.8%) were heard about marital rape and 383 (91.8) were able to define the marital rape correctly. In the study regarding source of information there were multiple responses given above. Majority were received information from social media 285 (68.42%). (Table 2)

Table- 3 Number of incidents of marital rape heard by respondents

Variable		Frequency	Percentage (%)
Heard about marital rape incidents	Yes	222	53
	No	195	47
No. of cases	1-5	152	36.45
	6-10	28	6.71
	11-20	17	4.07
	> 20	25	6.00

53% respondents were heard anywhere about cases of marital rape, it is almost half who were aware about cases. Most of respondents heard in the range of 1-5 case about marital rape. (Table 3)

Table- 4 Possible reasons for not reporting marital rape

Reasons*	Frequency	Percentage (%)
Loss of marriage	264	63.31
Spoilage of family reputation in society	339	81.29
Loss of financial support	121	29.12
Repetition of same incident	85	20.38
Do not consider marital rape to be a crime	241	57.79
Lack of knowledge/education	4	0.96
Future of their children	1	0.24
Patriarchal society	2	0.48
Social stigma	5	1.20
Lack of support legally	2	0.48

* Multiple responses

Out of 417 respondents, multiple responses were given regarding possible reasons for not reporting marital rape. Majority of participants revealed that spoilage of family reputation, loss of marriage, not consider marital rape is crime and loss of financial support is the biggest reason in none reporting of cases. (Table 3)

Table- 5 Possible causes of marital rape

Causes*	Frequency	Percentage (%)
Male dominance	311	74.58
Financial dependency of women	217	52.04
Alcohol and drug addiction	252	60.43
Marital infidelity	158	37.88
Sexual disagreement	226	54.20

* Multiple responses

Table 4 explains that male dominance is a big cause behind marital rape.

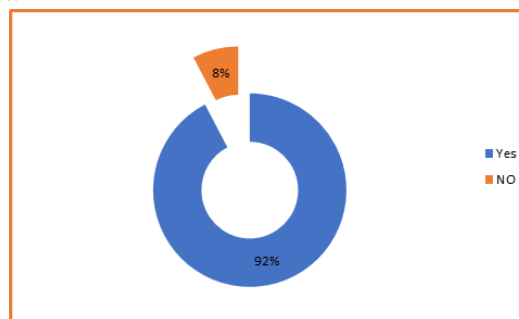


Figure- 1 Perception of participants regarding criminalization of marital rape

Figure 1 present data about perception regarding criminalization of marital rape, it was found that among 417 respondents 385 (92%) want to criminalization.

DISCUSSION:

Empirical research articles were not available on this topic, so, discussion was based on various reports, conventions, articles, books, newspapers commissions and judicial decisions.

There can be following issues and challenges:

Marital unity- William Blackstone has defined Principle of Coverture; "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs everything; and is therefore called in our law French a feme-covert, foemina viro co-operta; is said to be covert-baron, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture (6)."

Cultural differences (Sacred Institution of Marriage)- An important

argument also comes at front against criminalization of marital rape is that the concept of marital rape cannot work in India due to the stark cultural differences between the prevalent culture in India and the concept of marriage in the other countries. A fact emerges from the cultural relativism argument that the cultural value placed on the sanctity of marriage advances the argument that criminalizing marital rape would destroy the institution of marriage.

Patriarchy system- Patriarchal values and norms regulate 'defined' morality through character based on sexuality. It directly governs sexuality, reproduction and social productions prevailed and were expressed through specific cultural metaphors. Patriarchy expressed messages through different inferior symbols of women like self-sacrifice, self-effacing pure image of women and through the ritual practices which day in and day out emphasized the domination of women as a faithful wife and devout mother (7).

Implied consent- A common argument used against the criminalization of marital rape is the idea of implied consent within a marriage. In 1736, Sir Matthew Hale of England, Chief Justice in England, in his famous thesis entitled *Historia Placitorum Coronae* wrote that "the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract (8)."

Use of law for ulterior purpose- One view point of defendants of the exemption to marital rape is that women would incriminate their husbands for ulterior purposes. Women might tend to misuse this provision, which is the exact argument and criticism against article 398A (Dowry provisions). NGO called Men's Welfare Trust claims that laws have already given a special status to a married woman, wherein she is liable to get maintenance, alimony, right to residence from her husband by way of various provisions. In the light of this, men become vulnerable to victimization at the hands of women, who file false cases of sexual harassment, 498-A IPC and domestic violence etc (9). The Government of India has filed an affidavit before the High Court of Delhi and maintained that "it has to be ensured adequately that marital rape does not become an easy tool for harassing the husbands. The affidavit further maintains that criminalizing rape could destabilize marriages and make men vulnerable to harassment by their wives (10)."

Economic factor- Economic factor is extremely important to understand, why women keep living with men who rape them. Women are financially dependent on men, even women have no right to take decision about own earned money. There is always a fear in the mind of women that, if she will report the crime or even try to escape; she will lose her home, income, shelter of her child. Illiteracy also becomes the cause of unemployment and make susceptible to sexual violence by husband.

Impossible to Prove as a rape- Marital rape is a crime so personal in nature that it would be difficult to prove. In case of first incident, it can be possible but after no of repetitions, it would be difficult task to prove.

CONCLUSION:

Marriage is a holy custom in culture rich country like India. In marriage husband and wife both should be at same pace, like two wheels of one cart. But in India due to patriarchy to maintain balance is impossible. Men treated the women like 'submissive docile' or 'property' or 'servant' in any relationship and condition is worse in case of marriage. Marital rape is no less an offence than murder, culpable homicide or rape per se. Breakdown of women occurs in every way like physically, emotionally and psychologically. Research on marital rape is not too much due to under reporting of case. Justice Verma committee recommended criminalizing marital rape as rape but this recommendation was not considered. In India, it's just impossible to criminalize the marital rape. Sacred institution of marriage is a biggest challenge in the way of criminalization of marital rape. Male dominant society of India will never come forward in the favour of criminalization of marital rape. According to the constitution it's a responsibility of a nation to treat their citizens equally and also to protect all rights of them. On serious note marital rape should be criminalized either inclusion in section 375 or create a separate section.

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