



Rape in Marriage: A Socio-Legal Analysis of Perception and Attitude of Wife

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Abstract

Marital rape has to be seen from the prism of changing social perspectives and dynamics. Right from early times men were given supremacy in all social domains, will and desire of women became irrelevant and secondary. Rape within marriage is a concept that agonies the wife to the very core. Marriage in the modern times is now regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband. Then why marital rape is still not recognized as a crime, is a question for both society and government; as both are equally responsible for non-resolution of this menace. The present study is a socio-legal in nature, which is based on questionnaires distributed among 100 married women of Lucknow, India to appraise their opinions on various issues related to rape of wife by husband and to suggest measures with some concrete conclusion.

Keywords: Marital Rape, Violence against women, Criminal law, Sexual assault.

1. Introduction

Marital rape connotes rape during marital relations. Rape is derived from the Latin term 'rapio' which means 'to seize'; and 'marital' refers to the matrimonial bond. It conclusively means rape within the four walls of matrimonial relationship. The definition of marital rape is not provided in any of the statutes in India. Marital rape refers to "unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent." As far back as 1736, Sir Matthew Hale declared: 'the husband cannot be guilty of rape

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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.¹ It is a non-consensual act of violent perversion by a husband against the wife where she is abused physically and sexually². The offence against women, violating her dignity and self-respect and when it occurs within four walls of matrimonial home, it reduces the women to the status of an object used merely for sexual gratification³.

IPC is not the only legislation which touches upon the topic of marital rape; there are many more statutes which directly or indirectly deal with the issue of marital rape. Procedural complexity is very much known and apparent in the case of marital rape, but it is equally essential to understand the substantive position of marital rape and its attaching components in Indian legislations. The other statutes which in anyway deal with marital rape are Hindu Marriage Act, 1955, Protection of Women from Domestic Violence Act, 2005, Special Marriages Act, 1954, Divorce Act, 1869, Parsi Marriage and Divorce Act, 1936 and Family Courts Act, 1984. The definition of marital rape is not provided in any of the statutes in India. Marital rape refers to “unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent.” It is a non-consensual act of violent perversion by a husband against the wife where she is abused physically and sexually⁴. The provision of restitution of conjugal rights in Hindu Marriage Act, 1955⁵, Divorce Act, 1869⁶, Parsi Marriage and Divorce Act, 1936⁷ and Special

¹ Government of India, Report of the Committee on Amendments to Criminal Law (2013), Page no. 113

²*Nimeshbhai Bharatbhai Desai v. State of Gujarat* R/CR.MA/26957/2017, 3

³Rajni Nanda, “Marital Rape: Recent Position with The Criminal Law Amendment Act 2013”, Vol. 1 Issue 6 IJLS, 1

⁴Supra note 10

⁵Hindu Marriage Act, 1955 (Act 25 of 1955), s. 9

⁶Divorce Act, 1869 (Act 4 of 1869), s. 32

⁷Parsi Marriage and Divorce Act, 1936 (Act 3 of 1936), s. 36

Marriages Act, 1954⁸ are nothing more than another way of telling the married women that law does not understand her plight only because the root of her suffering is her husband. "There can be no doubt that a decree of restitution of conjugal rights thus enforced offends the inviolability of the body and mind subjected to the decree and offends the integrity of such a person and invades the marital privacy and domestic intimacies of a person".⁹ Even after such views and opinions being expressed by Indian judiciary, the legislations still accommodate these provisions. Although many a times it was contended by courts that restitution of conjugal right do not necessarily mean establishment of sexual relations¹⁰, but such provision makes it even harder for the wife to report for marital rape, because if a husband and wife are not judicially separated and wife is not below 18 years, there cannot be marital rape¹¹.

Although United States of America has laws for marital rape in all its states from 1993, but majority of states have some sort of loopholes that make prosecution of the accused hard and victim is not rendered with proper justice. In 2019, a woman found 2 year old video clips that showed her husband forcefully penetrating foreign object when she was not conscious and might have been drugged. As law in the state of Minnesota do not penalize sexual act without consent when the wife is unable to give consent, because of this loophole, the court did not charge the accused with felony and it broke an outrage among women protesters and legislatures. Keeping this case in mind the state legislature passed the Bill in 2019 which stands to get rid of this loophole. This prompt response was appreciated nationwide by women. The same kind of loophole is present in the relevant laws in the States

⁸ Special Marriages Act, 1954 (Act 43 of 1954), s. 22

⁹ *T Sareetha v. Venkata Subaiah*, AIR 1983 AP 356

¹⁰ Manan Katyal, 'Constitutionality of Restitution of Conjugal Rights under Hindu Marriage Act, 1955', available at: <https://blog.iplayers.in/constitutionality-of-restitution-of-conjugal-rights-under-hindu-marriage-act-1955/> (last visited on March 11, 2019)

¹¹ *Sree Kumar v. Pearly Karun*, 1999 (2) (Alt Cri 77)

of Michigan and Ohio, and the changes made by Minnesota sparked other states to introduce Bill in order to remove this exception. Very recently, Singapore criminalizes marital rape which came into force on 1 January 2020. This change has been made as a part of their Criminal Law Reform Act which got the assent of Parliament in May, 2019. This step of an Asian country is a milestone in itself and would definitely help the women empowerment movements in India as well as in other nations. This change might hopefully spark advent of new, safe and happy era for women.

Marital Rape Myths

1. MYTH: Marriage bond has many objectives, and two of them are reproduction and establishment of sexual relations between partners. Some people discard the notion of forced sexual relations between people who are supposed to establish such relations as they are in a matrimonial bond. The Blackstone's philosophy of man and woman as a single entity after marriage supports such notion and that when they are 'one', how 'one' can rape 'self'.

REALITY: It is to be understood that in India, Blackstone's unity principle, does not apply and even if it would apply, it is clearly unacceptable to snatch a woman's identity and individuality just because she got married. It should be without any doubt the rule that she is a human being first, then a woman and even much later a wife.

2. MYTH: Before marriage, wife is held to have given irrevocable consent to her husband till the marriage survives. So there cannot be a situation where wife can complain about unconsented sexual intercourse by husband.

REALITY: The right to give consent cannot be taken back from a woman just because she is married. Women have a sole right over their body and she should not be forced to engage in any activity that she does not consent to. Such exploitation is not an exploitation of a woman only but also of the Constitution, law, justice, morality and humanity.

3. MYTH: It is usually said that if wife does not want to engage in sexual intercourse, then she should and can resist if a husband force her to do so.

REALITY: Here people do not consider the difference in physical strength between a man and a woman. Also, it is essential to understand the nature of society which in majority is patriarchal and if this myth is true, several other crimes wouldn't be taking place such as domestic violence, rape, cruelty etc.

4. MYTH: It is contented that it is wife's duty to satisfy every need of her husband and if some demands are put forward by the husband; then why would a wife say no or not be willing to have sexual relations with her husband?

REALITY: It is not one way around that wife is supposed to satisfy husband's need and husband is not even supposed to take care of the needs, wellness and health of his own wife. It should be clear that marriage does not make a women slave, who has to work at the will of the husband only. Marriage revolves around the notion of equal and mutual partnership, respect and love.

5. MYTH: Penalization of marital rape would intervene in the private matters of a couple and would be infringement of privacy of individuals.

REALITY: Right to privacy would not get affected in any way if marital rape gets criminalized as its trial procedure would not be any different from that of offences such as cruelty, domestic violence and divorce proceedings; which of course are not an intervention on privacy but helping hand to the victim.

6. MYTH: The offence of marital rape will affect women only and men will become the ultimate victim of misuse of this kind of law.

REALITY: This act of physical and mental distress is not only the concern of women; but equally that of men as well. Many instances have been seen where men get verbally

humiliated and blackmailed for divorce if they are not able or willing to satisfy their wives' sexual needs. Men should not be worried of its misuse that judicial system treat cases of marriage more delicately but they should be worried of no legal protection for them in case of marital rape or assault against them.

2. Determinants of Marital Rape

2.1. Patriarchal society

The male-dominated society overpowers the aspirations and dreams of the woman. In a home, the whole life of woman revolves around the male counterpart i.e. husband, father or son. Every day from waking up in the morning till sleeping at night wife is supposed to work in the interest of the home and the husband as if she does not have any wishes or hopes of her own. And women, who have accepted subordination of men, and made it their fate that they are inferior to the male counterpart, are mostly who are subjected to marital rape and violence from their husband.

2.2. Physical dominance of spouse

The power struggle between man and woman is not new phenomenon. It revolves around many aspects such as physical strength, mental strength, psychological strength, economic strength etc. The main reason for males to consider themselves as superior is based on their physical strength. They are physically strong and females are weak and thus dominate woman.

2.3. Sexual repression

Sexual repression by men and objectification of women nearly at every public platform is yet another reason for marital rape. Not giving the respect and consideration of more than a sexual being to women has led to the loss of dignity and morality among men with regard to women. Use of objectionable words to describe women in daily life, movies, T V serials, books and magazines have demeaned the position and role of women in the world and confined women to a mere sex symbol.

2.4. Cultural tolerance

There is a wrong notion that the women have accepted this demoralizing behaviour of men because these things have been happening to women since time immemorial and it would not stop any time soon. There is no reason to make it such a big issue. It is only going to make things worse for women. “*Patiparmeshwarhai*”. This statement suffices the position that males occupy in a marriage. These cultural notions have led to this power struggle.

2.5. Financial dominance

As women are not given the opportunity to be independent and earn living for themselves, this causes the situation where women remain with no option but to tolerate the violence as they are dependent on their male counterpart for bread, roof and a piece of cloth. Many men have the view that they are giving the livelihood to their wife, then she should obey everything of her husband. This is one of the major causes of marital rape.

2.6. Religious norms and preaching

Religion plays a very important role in the mindset of the people. There is a saying that a woman after being married only leave her matrimonial home after she dies, not before. This notion burdens the women that if they are revolting against the violence in marriage, they are defying their religion, family values and not fulfilling society’s expectations from a woman.

2.7. Societal pressure

Huge pressure is put on married couple, especially on woman to present her marriage as perfect as she can be. Instead of helping the couple to come up with the resolution of their issues, they are told to make compromises. Such societal pressure makes life of victim of marital rape a living hell. Marriage is a very sacred institution and should be respected and preserved.

3. Empirical Study on Marital Rape

The purpose of the study is-

- To explore the level of awareness regarding marital rape.

- To examine the behavioural pattern regarding marital rape awareness.
- To understand the views of married women regarding marriage and marital rape.
- To comprehend the opinion on the need of understanding marital rape laws among respondents.
- To examine the seriousness of the issue in the mind of married women.
- To understand the level of awareness to be spread to make respondents aware of the social menace of marital rape.

4. Methodology

The present study is an empirical (non-doctorial) research and is to be carried out in a very limited time with an intention to collect most authentic data. Conducting empirical research in the area of law is of recent origin. For the awareness and perspective regarding marital rape, the data was collected through a questionnaire. Well-designed questionnaire was filled-up by personal visits to the respondents. The core objective of this study is to investigate about the level of marital rape awareness among married women and the reality of sexual abuse in marriage in their life itself. The response given by respondents has been analysed and produced in a structured format. Analysis of responses has been made along with the question. Finally, in the end, conclusion has been drawn and suggestions have been made.

4.1 Universe

The present study is conducted in Lucknow because this is one of the biggest and diverse residential areas in the state where quality data will be available that would help to eliminate biasness in the study.

4.2 Sample Size

The residential area of South City, Lucknow was selected for this research. Since this aims at examining the level of awareness and the plights a married woman faces in her matrimonial home, 100 respondents were selected randomly for this response.

5. Limitations of Research

The limitations of research are as follows:

- The number of respondents for research are 100 and it consist only of married women who are living with their husband and are not separated, divorced or widowed.
- The research has been completed in a limited time.
- The area which was selected for research is totally in the city of Lucknow, so the responses gathered could vary if taken from the other parts of the city.

6. Data Analysis and Interpretation

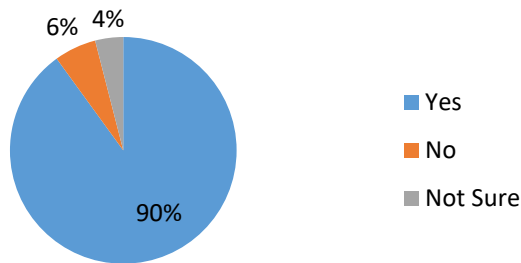


Fig.1: Is Rape by Husband Possible?

Fig. 1 reflects on the awareness and beliefs of the respondents regarding marital rape by their husband, and in this regard, 90% of the women are aware and think that marital rape by husband is possible, whereas 6% resent the notion. 4% are not sure about the phenomenon or the menace of marital rape by husband in the society.

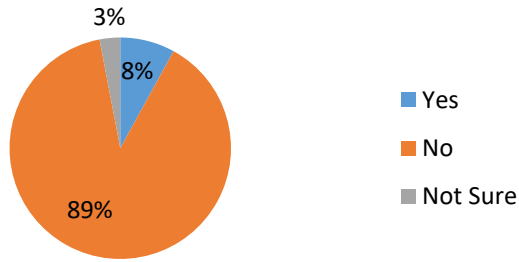


Fig. 2: Whether Husband has a Right to have Sexual Intercourse without the consent of wife?

The response on this question is of a lot importance, as this gives an impression of the mindset of the respondents. 89% of the married women gave negative response to the question, while 8% say that husband has the right to have sexual relations with wife without her will. While 3% are not sure and cannot give a definite response.

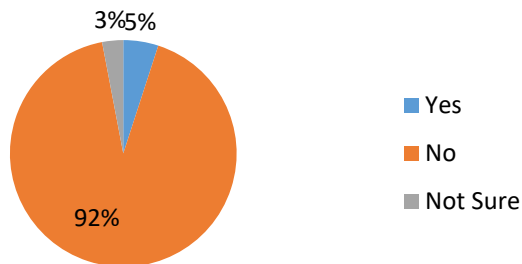


Fig. 3: Is Marriage a license to Rape?

The above figure shows that 92% of the women are of the view that marriage is not a license to rape the spouse, whereas 5% gave affirmative response. While 3% are not sure. The response to this question raises many concerns, legal as well as social.

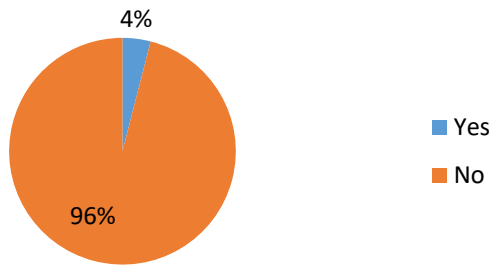


Fig. 4: Is Wife a Property of Husband?

The above figure implies that 96% of the respondents are of the view that wife is not the property of husband, whereas 4% gave an affirmative response to this question.

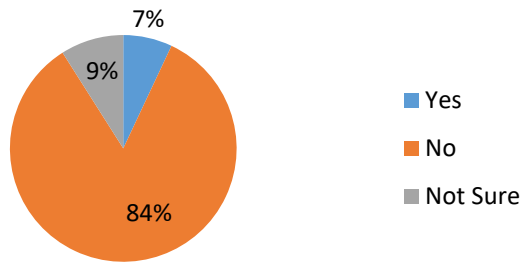


Fig. 5: Whether Marital Rape is a Recent Phenomenon?

The above figure elaborates the percentage of the people who are of the view that marital rape is a recent phenomenon. 84% of the people say that it is not, while 7% say it is. On the other hand, 9% are unaware and not sure.

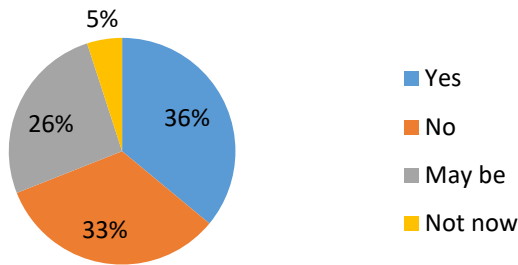


Fig. 6: Is it a Gender-Neutral Issue?

The above pie chart shows that 26% of the respondents are not aware and unsure about the fact whether marital rape is a gender-neutral issue. While 33% state that it is not a gender-neutral issue. 36% are of the affirmative view. And 5% say that is not a gender-neutral issue now.

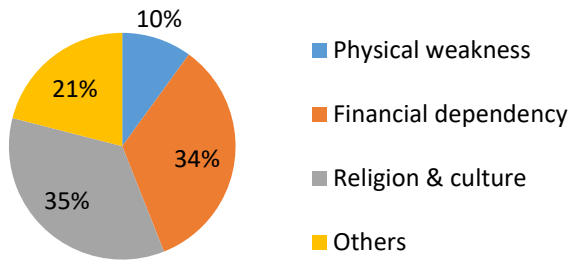


Fig. 7: Why Women Tolerate Marital Rape?

From the above figure is it clear that 35% of the respondents think that religion and culture is the prominent reason for women tolerating marital rape. 34% of the people seem financial dependency as the reason and only 10% stated physical weakness as the cause. While 21% gave other reasons such as children, society, family etc.

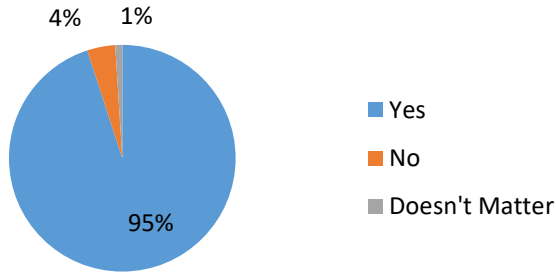


Fig. 8: Is Sexual Intercourse without Consent of Wife is Equivalent to Violence?

The above figure elaborates on the response of the question that whether sexual intercourse without consent of wife is equivalent to violence. 95% gave an affirmative response and 4% say that sexual intercourse without consent of wife is not equivalent to violence. While 1% are of the view that it doesn't matter at all.

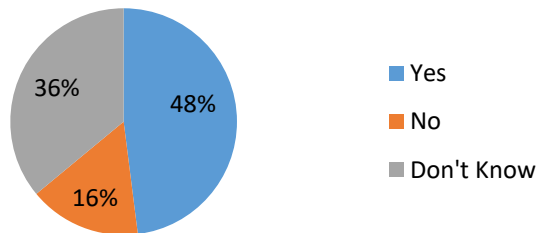


Fig. 9: Is Marital Rape Criminalised in India?

As per the above figure, only 48% of the people are of the knowledge that marital rape is criminalized in India, while according to 16% people it is not criminalized. And 27% of the respondents don't know the legal character of marital rape.

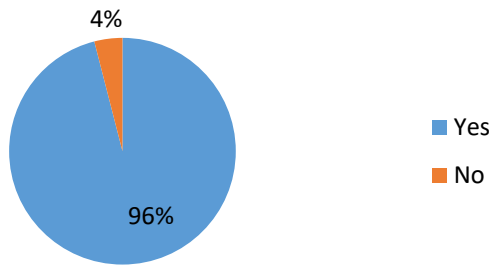


Fig. 10: Whether Consent of Wife is Important or should be Taken?

As per the above pie-chart, 96% of the people consider taking wife’s consent before sexual intercourse or any sexual activity as crucial and important, while 4% don’t.

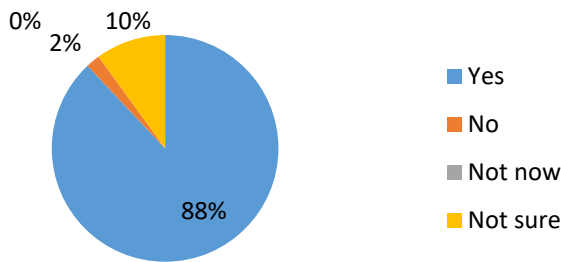


Fig. 11: Should Marital Rape Be A Crime Punishable By Law?

The response to this question unfolds the mindset of the married women and their potential marital responsibilities and duties. 88% of the respondents are of the view that marital rape should be punishable by law, whereas only 2% say that it shouldn’t. 10% are not very sure how and when law should intervene in marital rape and no one thinks that this is not optimum time for criminalizing marital rape.

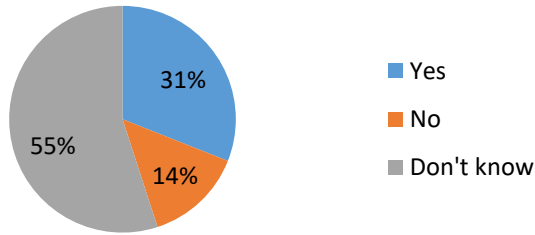


Fig. 12: Is There Any Law Which Punishes Marital Rape?

The above figure reflects that only 55% are aware that marital rape is punishable by law, whereas 31% of the respondents think that there is no law with regard to marital rape and 14% of the people don't know about the legality of marital rape.

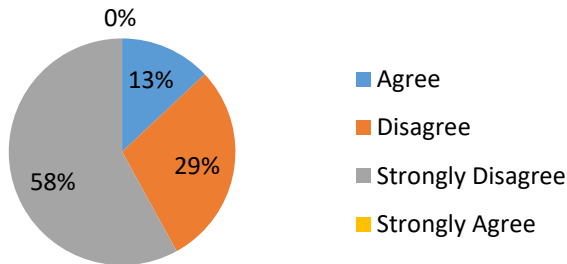


Fig. 13: Is It Culturally Justifiable to Make a Forced Sexual Relationship With Wife?

The above figure elaborates on the view that no one strongly agree that it is culturally justifiable to have sexual relations with wife, only 13% agree with the justifiability and 29% disagree and 58% strongly disagree with the notion.

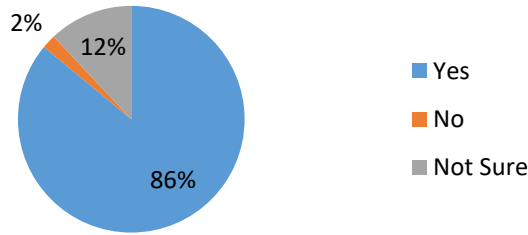


Fig. 14: Can Marital Rape Be A Ground For Divorce?

As per the above figure 86% of the respondents are of the view that marital rape can be a ground for divorce. According to 2% of the people marital rape cannot be a ground for divorce, and 12% are not sure.

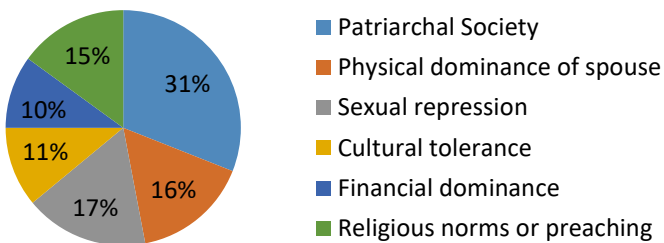


Fig. 15: What Is the Most Contributing Factor For Marital Rape?

As per the above figure 31% find patriarchal society as the most contributing factor, 16% think that the physical dominance of the spouse, 17% think sexual repression, 11% find cultural tolerance, 15% religious norms and preaching and 10% think financial dominance as the prominent factor for marital rape.

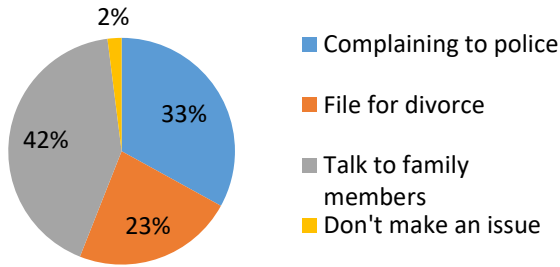


Fig. 16: What should be the Recourse to Be Chosen By Wife in Case of Marital Rape?

As per the above figure 33% think complaining to police is the appropriate step, 23% think that filing for divorce is optimum recourse, 42% think that talking to family members would be appropriate and 2% are of the view that one should not make issue about marital rape.

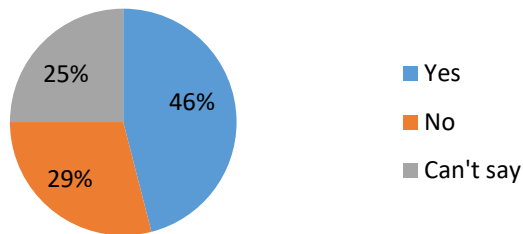


Fig. 17: Should There Be Any Law To Criminalise Marital Rape By Parliament?

As per the above figure, 46% are of the view that there should be law framed on marital rape, 25% cannot form an appropriate response on it and 29% don't find necessary to laws made on marital rape by parliament.

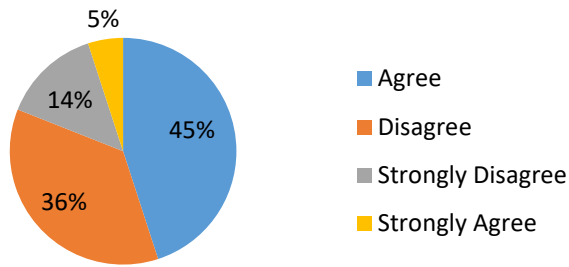


Fig. 18: Do You Think If Marital Rape Is Criminalised Divorce Rate Would Increase?

As per the pie-chart, 45% agrees, 36% disagree, 5% strongly agree and 14% strongly disagree on whether divorce rate would increase if marital rape gets criminalized in India.

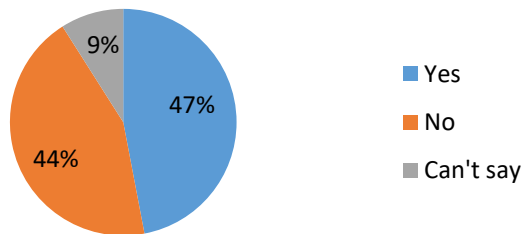


Fig. 19: Is Criminalising Marital Rape A Right To Privacy Issue?

As per the above figure, 47% agree on the question that it would raise issue of right to privacy, 44% dissent from the notion and 9% chose to not provide definite answer and went with "can't say".

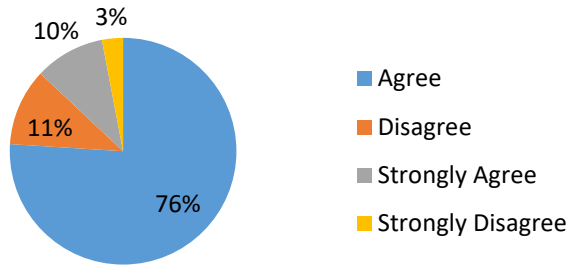


Fig. 20: Is It Against Principle Of Equality?

As per the above figure, 76% are of the view that marital rape is against principle of equality, 31% say that it is not against the equality principle, 10% strongly agree with the question and 3% strongly disagree.

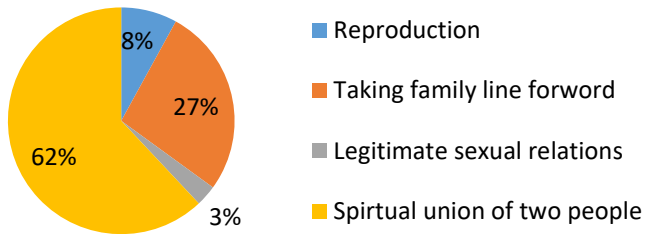


Fig. 21: Object of Marriage

The above figure shows that 62% of the respondents possess the view that object of marriage is spiritual union of two people, 27% reflect on taking family line forward, while 8% render views of reproduction as the object of marriage whereas only 3% provide legitimate sexual relations as response.

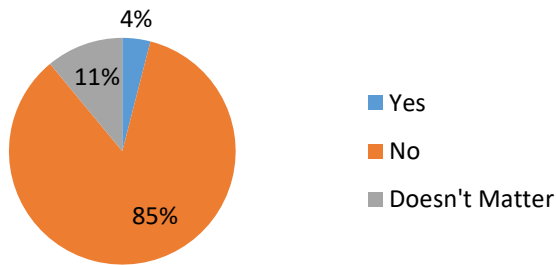


Fig. 22: Will You Allow Your Spouse to Have Sexual Intercourse Without Your Will?

The above figure shows that 85% of the respondents won't allow their spouse to have sexual relations without their will, while for 11% it doesn't create a concern and whereas 4% will allow their better half to have sexual intercourse without their own will.

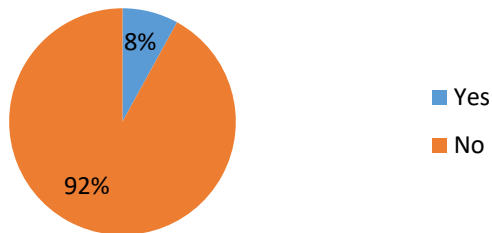


Fig. 23: Experiencing Sexual Violence

The above figure shows that only 8% of the respondents have experienced any form of sexual violence from their husband and 92% of the married women have denied any such experience or violence; which clearly would indicate any two of the following inferences firstly, it indicate the hesitation on the part of women accepting any such private family affair or secondly, it could be the situation that sexual violence is really very less against wife. Although the second implication doesn't seem accurate for women in this patriarchal Indian society.

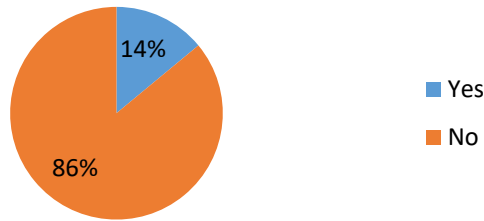


Fig. 24: Have You Faced Any Threat To Have Sexual Intercourse From Your Husband?

The above figure shows that 86% of the respondents haven't faced any threat from their husband for sexual intercourse and 14% of married women admitted the use of threat on the part of husband for sexual intercourse.

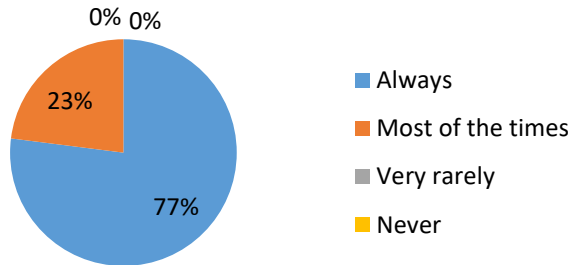


Fig. 25: How Often Does Your Husband Seek Your Husband?

The above pie chart elaborates on the fact that 77% of the women said that their husbands always seek their consent and 23% of women responded that most of the times take their consent for sexual intercourse.

7. Findings and Discussion

Selecting South City as universe for this socio-legal study was very fruitful; as it is the residential area. It was established 20 years ago and is very diverse in relation to social status, religion, education, occupation etc. The results that have been obtained from this

socio-legal study have diversity embodied in it. A wide range of respondents were selected in this study in order to get a sample, with diverse socio-legal attributes that reflect the thought, opinion and view of married women at large in Lucknow.

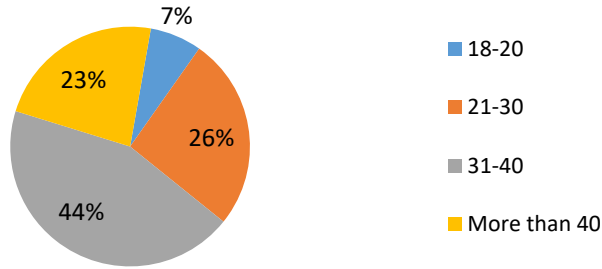


Fig. 26: Age Groups of Respondents

The respondents of this study belong to a variety of age groups (Fig. 26). 7% belong to 18-20 years, 26% belong to 21-30 years, 44% belong to 31-40 years and 23% are more than 40 years old. This would help to gain perspective of the married women who are newly married may be of 22 years old approximately and married women who have been in this bond for decades. Age variance really enhances the quality of result as it would contain the opinions of married women towards marital rape through different spectacles. As it would depict what a 21 year old thinks and what 55 year old married women think of spousal rape.

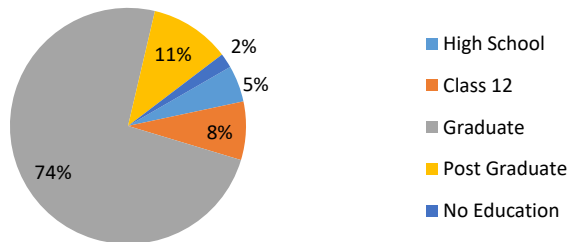


Fig. 27: Educational Qualification of Respondents

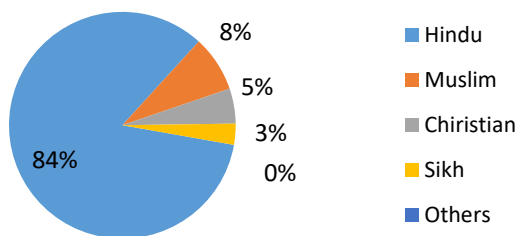


Fig. 287: Religion of Respondents

Respondents having educational qualification ranging from not educated at all to post graduates are part of this study (Fig. 27). It is again another factor which formulates the views towards marital rape of a married woman. Respondents belonging to different faiths are given appropriate consideration as religious preaching from the very beginning frame the mind-set (Fig. 28).

It is remarkable that approximately 90% married women are of the following views:

1. Rape by husband is possible.
2. Husband do not have right to have sexual intercourse without consent and will of wife.
3. Marriage is not a license to rape.
4. Wife is not a property of husband.
5. Sexual intercourse without consent of wife is equivalent to violence.
6. Consent of wife is important and should be taken.
7. Marital rape should be punishable by law.

It is very intriguing that 55% of the women admitted that they don't know if there is any law that punishes marital rape. And only 14% know that there is no law on marital rape. This clearly indicates on the need of sex education and general awareness to be spread among women for their well-being and happiness. The present study though conducted on a small sample reveals that women want marital rape to be an offence and they observe it as a violation of fundamental right of equality and women described

religion and culture as the most important factor for tolerating of marital rape. Women should not be considered as some chattel and should be given respect that they deserve and marriage should not be some excuse to accommodate sexual abuse against a woman.

During this study, one of the respondents while describing her thoughts on marital rape said:

“I am a human first, before becoming someone’s daughter or wife or mother, I am human first, so why should I be deprived of my own body and dignity. I am a woman, but only after being a human.”

Another respondent of about 45 years age said:

“It is hard to live with this love-hate relationship I don’t hate my husband, but I don’t like that he does not take my wish and desire in consideration in the bedroom. The hardest thing is to wake up early in the morning and smile and laugh at his jokes and pretend like nothing has happened.”

This study suggests that married women are aware of the menace of marital rape. They are not only aware but they acknowledge its presence. Moreover, they want it to be criminalized. Perspective of married women is very important as most of them want to have a happy and safe married life. They cannot afford to lose the shelter over their head; If marital rape gets penalized, then after complaining against it, would land their spouses in jail. More than 85% responded that they won’t allow their partner to have sexual intercourse without their will. This indicates that there are married women who don’t accept marital rape and even though they don’t have any choice. Nearly 15% women have said that establishing sexual relations with wife without her consent is culturally justifiable. This demands counselling of women in order to make them realize that their life, health, wellness and more importantly their consent matters; and if husband try to abuse his wife in any manner, it should not be tolerated.

8. Conclusion and Suggestions

Irrespective of the fact that women have to be treated unequal, they face a lot of problems in a marriage such as giving up their career, dowry demands, loss of self-respect and individuality and to top it all, the absence of liberty to deny sexual intercourse with husband, which could lead to sexually transmitted disease, unwanted pregnancy or any physical harm. The domination of society on the woman is apparent as there is absence of reciprocal respect, dignity and integrity which they deserve. Here legal authorities have to play significant role after the society accepts the issues women face due to marital rape. The real struggle is the issue of changing the mindsets of the society and making people realize that women are not mere sexual beings but are respectable individuals with wishes, hope, liberty, responsibility and rights. And it does not only hold true for women, this statement should be construed in universal manner irrespective of sex, gender and sexuality, no one should be deprived of his dignity and self-respect.

We must, at this stage, rely upon the opinion of Prof. Sandra Fredman of the University of Oxford, who has submitted to the Committee that the “training and awareness programs should be provided to ensure that all levels of the criminal justice system and ordinary people are aware that marriage should not be regarded as extinguishing the legal or sexual autonomy of the wife”.¹²

The Law Commission of Britain report observed that, “A woman, like a man, is entitled on any particular occasion to decide whether to have or not to have sexual intercourse, outside or inside marriage.”¹³

The following suggestion was made by the Law Commission of India, which could help in combating the issue of malicious prosecution and victimization of husband and in-laws:

¹² Government of India, Report of the Committee on Amendments to Criminal Law (2013) Page no. 118

¹³ ‘Britain: Law Commission urges ban on rape in marriage’, 21(5) *Off Our Backs*, The Work Issue (May, 1991), 3

“Make 498-A IPC gender neutral. 498-A should be removed from criminal case as it is a family matter and because of this many adverse consequences will follow. The filing of Police report after FIR must be completed in three months and court proceedings should be completed within one year thereafter.”¹⁴

Another contention which remains the highlight of the arguments is how such a crime could be proved which take place between two people within four walls, and there is one simple solution for that i.e. even though marital rape is not an offence in its own but it has few of its facets in Section 498-A of IPC; and sexual exploitation till now come under the purview of this Section only. It is very apparent that there are well established procedures for trial of the offence of cruelty. So with some changes and additions the procedure for trial of offence of marital rape could be framed which give protection to husbands against malicious accusations and ultimate redressal of grievances to married women. It was suggested by the Law Commission of India¹⁵ that following provision should be added in Indian Evidence Act, 1872:

“114A. Presumption as to absence of consent in certain prosecutions for rape.- In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.”

¹⁴ Law Commission India 243th Report, 498-A (August, 2012), Page no. 77

¹⁵ Government of India, Report of the Committee on Amendments to Criminal Law (2013) Page no. 117

The draft bill that is proposed by Dr. Shashi Tharoor in 2019 in Lok Sabha, has some very appreciable texts and recommendations; but the suggestion of just omitting the Exception 2 from Section 375 does not appear to be an optimum solution. There should be some scope of revival of the marriage if it turns out that both the spouses are of the view that they would like to be married and just want to not repeat the mistake of taking wife's consent for granted. It would not be very easy to establish this in nation like India, but at this stage when women are not even safe in their homes; there is a need for legislation in regard of marital rape.

Although in the same report it was put forward by the Law Commission that deleting the Exception of Section 375 of IPC would amount to excessive interference with the marital relationship.¹⁶ But later on Justice Verma Committee on Amendments to Criminal Law recommended that such Exception should be deleted and relationship between the accused and victim of offence of rape and forced sexual relation should not be a determining factor for culpability, marital rape should be punishable.¹⁷

Many reasons and arguments are given for the criminalization of marital rape. The below figures actually demonstrate the status and situation of Indian women and marriages¹⁸:

- a) 52% of women and 42% of men believe that a husband is justified in beating his wife.¹⁹
- b) A husband is justified in hitting or beating his wife if she refuses to have sex with him, for this 13% woman and 9% men shared the same contention.²⁰
- c) The percentage of women who agree that women can refuse sex to their husband has remained virtually unchanged since

¹⁶ Ibid. at 15

¹⁷ Ibid. at 117

¹⁸ National Family Health Survey (NFHS-4), 2015-16: India. Mumbai: IIPS

¹⁹ Ibid. at 514

²⁰ Ibid.

NFHS-3, but this percentage has declined by 7 percentage points for men, from its level in NFHS-3 (i.e., 70%).²¹

- d) 17% of women and 15% of men do not agree that a wife can refuse sex.²²
- e) 18% of men do agree that a husband has the right to get angry and reprimand a woman if she refuses to have sex with her husband.²³
- f) Thirty percent of ever-married women have experienced spousal physical violence, with 23% experiencing this type of violence in the past 12 months. Seven percent have experienced spousal sexual violence, with 5% experiencing this type of violence in the past 12 months. Spousal emotional violence was reported by 14% of ever-married women, and 11% reported such violence in the past 12 months.²⁴

Fear of husband and spousal violence are highly correlated. Women who say that they are afraid of their husband most of the time are most likely to have ever experienced spousal violence (58%), followed by women who are sometimes afraid of their husbands (32%). Among women who say that they are never afraid of their husband, 20 percent have experienced spousal violence.²⁵ Reasons given by society, legislature and judiciary for non-criminalization of marital rape-

- a) During marriage irrevocable consent was given, then why should consent become a factor afterwards.
- b) Husband is supposed to establish sexual relations with wife, and if he cannot do so with his own wife, then with whom he is supposed to do so.
- c) Wife and husband is one unit and wife cannot rape oneself.

²¹ Ibid. at 515

²² Ibid.

²³ Ibid.

²⁴ Ibid. at 568

²⁵ Ibid. at 571

- d) Wife will use this kind of law to harass the husband and in-laws.
- e) Proving marital rape is very hard to prove in court of law.
- f) Marriage would not be able to survive if law will enter the bed room.
- g) It would jeopardize the relationship of husband and wife.
- h) Wife is supposed to fulfil needs and desires of husband, and she cannot and should not step down from her wifely duties.
- i) India is land of culture and such a law that questions the validity of sexual relations would pollute the culture and heritage.
- j) What would be the fate of marriage when husband lands up in jail?
- k) India should not follow the footsteps of western nations, as would bring havoc in the lives of people and culture.
- l) Criminalizing marital rape would increase divorce rate among married couples.

Recently a case was brought before Allahabad High Court²⁶ in which a complaint was filed by a woman for rape. During the hearing the accused (man) took the plea of being married to the victim. Court had asked the accused to show the marriage certificate to prove his claim. This all appears to be a big mockery of marriage, dignity of woman and law itself. It is very hard to comprehend the status of women in India as this is the country which treats women as goddesses but have to fight every day for their dignity, life and existence.

In many reports of Law Commission of India, it was suggested that law against sexual assault should be made gender neutral as time has changed and many cases of sexual assault against men had come forward and denied even being reported as other than POSCO. There is no law that would help men to get justice against

²⁶Rape Accused Claims He Has Been Married To The Victim; SC Asks Him To Show Marriage Certificate, *available at*: <https://www.livelaaw.in/news-updates/sc-asks-rape-accused-to-file-marriage-certificate-144267> (last visited on April 18, 2019)

sexual assault in any form. Law should not be discriminatory in nature and should render justice and aid to everyone who seeks its help.

9. Suggestions

- a) There should be discussion and debate in parliament and universities; and research should be carried out by researchers on marital rape.
- b) Approach should be adopted that women have right to give consent rather men having right to not seek consent for sexual intercourse with their spouse.
- c) The concept of marital rape is an antithesis of the philosophy of the sacrament of marriage where man and woman are understood at par supporting each other in the journey of life. So, there should be mutual respect between husband and wife.
- d) The myth that wife is property of husband should be broken.
- e) Marital rape is an example of age old power struggle between man and woman that should be restrained as soon as possible for healthy and sustainable marriage.
- f) Marital rape is gender neutral issue and is against the ideals of modern, democratic and welfare society.
- g) State should take into account financial independency of women, as would help them to take stand for their rights against an abusive marriage and do not feel burdened to be part of it. Women should be preached and taught that religion and culture do not supersede democratic rights of women and that why her dignity and rights should not be compromised at any cost. The concept that women are physically weak should be torn and should be empowered to such an extent that they could take stand for themselves against their husband and society if subjected to sexual abuse.
- h) Holier than thou position that has been given to husband in Indian society should be challenged by women and any kind

violence against them should not be tolerated and come under purview of law.

- i) This is an offence against humanity much before it is a women rights' issue, this thought should be spread in the society.
- j) The place that marriage has as an institution cannot be undermined and it should be given importance but not at the cost of life and misery of an individual.
- k) Women should be encouraged to study and be educationally empowered in order to become financially and mentally independent; and do not fear to make her voice heard.
- l) There could be system of hotline help to women that would support counselling facilities to them at their homes. This way they don't have to seek help outside for any problem and would become aware of the redressal methods, and would not take any wrong steps when faced any problem.
- m) Fast track procedure should be framed for handling sensitive issues like this as it would wind up the case in less than 3 months which would help in non-victimization of women during decades of trail period.
- n) Police administration should be made to undergo sensitization programs, as to become more sensitive towards the plights of married women.

The issue of marital rape should be open to discussion on different platforms so that women do not hesitate to come out and share their views and perspectives.

Chief Editor: [Decision on 11th May, 2022) The division bench of Delhi HC was called to decide constitutionality of section 375 (2) of the Indian Penal Code, i.e., marital rape exception to the legal status of marital rape. The two judges discussed at length several important issues that resulted in conflicting opinions. Justice Rajive Shakhder opined that the object of law is to penalize certain sexual acts when committed without the consent. The act is punishable for its harmful effects and lack of consent. This makes marriage

bond irrelevant. Woman who faces non-consensual sexual acts has been raped, regardless of her relationship with the accused. Since there is no rational relationship between differentia (married and unmarried women) and the object of law (punishing non-consensual sexual acts) marital rape exception fails the test of reasonable classification and must be struck down as unconstitutional. The help of Article 14 has to be taken which forbids inequality and discrimination. He said that “the right of women to withdraw consent at any given point in time forms the core of the women’s’ rights to life and liberty which encompasses her right to protect her physical and mental being”. He called for change in 162 year old law.

Justice C. Hari Shankar came with the opposite finding by holding that though main object of the provision is to punish acts of rape, the object of marital rape exception is to keep the taint of the allegation of rape outside the marital relations with an object to protect the institution of marriage and concludes that the differential treatment as pleaded in the case hand is constitutional. The key issues of disagreement between the two judges were: availability of evidence; the importance of consent; whether courts could adjudicate over the issue of marital rape or legislature could decide; whether the state’s concerns about safeguarding the institution of marriage were valid or not and whether remedies were available to women survivors of spousal violence in other laws such as the law on domestic violence. Hindu 11 May 2022 (Online)

Before bringing marital rape within the pale of criminality, (as the case will be now heard by the larger bench or will be referred to the apex court), its pros and cons have to be weighed in golden scales. No one will justify violence of any nature to wife including unwanted or nonconsensual sex but to punish husband for it will be too much to ask for. Will it be easy for a husband to share the bed with the same wife and to enjoy sexual intercourse with her who has been hell bent to disgrace her husband for having unwanted sex with her? Will marriage bond continue even after

husband has been punished for having unwanted sex with her wife? Will punishment be gender neutral as there are cases filed by husbands for divorce for over demand of sex by their wives? Is there any empirical evidence available to show that women have sought divorce because of marital rape so as to end marriage bond only on the demands of unwanted sex by their husband? The concept of marital rape is western in origin where marriage institution has lost its spirit and only its shell has remained. Will it serve any worthwhile purpose to follow blindly this concept of west ignoring mindset of the east and nature and value that is attached to marriage institution? Having urge for sex more than the normal is a biological issue, instead of penalizing it, the other alternatives can be explored. For instance: if wife is not ready to meet the excessive demands of sex or not ready to accept unwanted sex, she (If she is a Hindu) can take recourse of section 13 (1) of Hindu Marriage Act, 1955 that provides "cruelty" as a ground for dissolution of marriage and defines it as willful and unjustifiable conduct of such character as to cause such danger to life, limb, or health, bodily or mental or as to give rise to a reasonable apprehension of such danger. The marital rape will fall in the definition of cruelty. The concerned wife can plead that her bodily or mental health will be so affected as to constitute cruelty on the part of her husband. Once it is established; she can gracefully walk away from the marriage bond. But to inflict punishment to the husband for unwanted sex with his wife and then to expect from couple to live together happily as husband and wife is akin to 'eat the cake and have it too'. Mindset of both the parties (husband and wife) has to be properly understood before making any decision on marital rape, lest we may do more harm to the marriage institution than any good to it. We may be relegating this marriage institution to the commercial relation like partnership and may not be able to retain it as a bond of love and affection where one partner has ailment and another partner feels its pain.