



# Marital rape, heinous as any other form of rape

**By Upasana Mahanta**

Responding to a question in the Rajya Sabha regarding the government's stand on criminalising marital rape, Minister for Women and Child Development Maneka Gandhi stated that marital rape laws cannot be "suitably applied in the Indian context". The minister cited various factors such as "level of education/ illiteracy, poverty, myriad social customs and values, religious beliefs, mindset of the society to treat the marriage as a sacrament, etc" as justification for continued immunity to perpetrators of marital rape.

This statement raises certain rather disconcerting questions - why is marital rape different from other forms of rape? How can the prevalence of poverty or illiteracy be perceived as valid grounds of defending rape offenders? Does marital rape occur only in poor and illiterate households? More importantly, how does marriage become a licence to rape?

Marital rape occurs when one spouse has non-consensual sexual intercourse with the other, or where consent is extorted by threats or fear of bodily harm. Section 375 of the Indian Penal Code (IPC) that deals with rape, exempts marital rape from its purview by stating that "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape".

The foundation of this archaic sentiment can be traced back to the 17th century English laws which established that once married, the wife does not have the right to refuse sex to her husband. The wife is thus perceived as a property of the husband and marriage contract is

taken as an entitlement to sex.

Although the UK criminalised marital rape in 1991, India continues to defend this form of 'legalised' sexual slavery. What is further disturbing is that while on the one hand the Prohibition of Child Marriage Act makes age of consent for marriage 18 for girls, women above 15 can be raped by their husbands with legal impunity.

It is feared that criminalising marital rape will threaten the sanctity of marriage and will lead to the breakdown of the family. This fear stems from a patriarchal and misogynistic morality that legitimises violence against women. Does the sanctity of marriage not break the moment one spouse physically, sexually, or mentally abuses the other? But in the name of tradition, culture and sacredness of marriage rituals, women are expected to silently bear such abuse in a marriage.

Evidence has shown that marital rape is one of the most common forms of sexual violence in India. The 2005-06 National Family and Health Survey (NFHS-3) records that 10% currently married women in the age group of 15-49 have experienced sexual violence and the vast majority of them have experienced such violence at the hands of their husbands.

### **Verma panel report**

The Justice J S Verma Committee, which was set up in 2012 to suggest amendments to the criminal law relating to sexual violence against women, had recommended that exemption to marital rape under the IPC be removed. The Committee laid down that marriage should not be considered as an irrevocable consent to sexual acts. However, the Criminal Law (Amendment Act) 2013 did not incorporate this recommendation of the Committee.

Courts often have to, therefore, fall back on the Domestic Violence Act (2005) while attempting to give justice to victims of marital rape. This is quite inadequate as while the Domestic Violence Act does provide civil liberties to the victims of sexual violence by husbands (shelter home, monetary or medical relief), it does not perceive marital rape as an act of criminal violence.

Those opposed to criminalising marital rape often cite possible misuse as one of their chief reservations. It is useful in this context to refer to a July 2005 judgement of the Supreme Court on the constitutionality of Section 498(A). While upholding the section, the court held that in cases of abuse, it is the 'action' rather than the 'section' that needs to be questioned.

Possibility of abuse cannot become a rationale for denying justice to women in marriage. Moreover, aren't all laws abused or misused? Don't we have cases of false allegations of murder or any such other crime? Should we not be insisting on having redressal mechanisms in

place against such misuse of laws rather than advocating for an absence of legal protection to victims of marital rape?

The other key objection to criminalising marital rape is that it is difficult to prove. All cases of rape in a marriage are not necessarily accompanied by physical violence, then how does one prove that rape was committed. However, the bigger question is, should difficulty in accruing evidence become a ground for denying justice? It is also often difficult to prove rape when it occurs outside marriage.

Court room processes of examination and cross examination, forensic evidence and other mechanisms can be used to provide evidence of marital rape. Also, it is important to note here that globally, more than 50 countries have criminalised marital rape.

The right to be free from coercion and violence in relation to sex is a human right that is upheld by international law. For how long can we continue to cite procedural deficiencies in prosecuting marital rape as a justification for continued immunity to offenders?

Marriage cannot become a legal authorisation to commit sexual violence against women. Marital rape is just as heinous as any other form of rape, what sets it apart is the fact that the victim of marital rape has to continue to live with her rapist.

It violates a woman's fundamental right to live without fear and with dignity. Instead of protecting the offenders, the government must ensure that effective criminal remedy is available to victims of marital rape.

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