

---

## MARITAL RAPE IN INDIA: NEED FOR LEGAL RECOGNITION

---

By- Mansa Joshi<sup>1</sup>

### ABSTRACT

In India marital rape still not comes under the purview of crime. It is a sensitive issue and has not been considered seriously in Indian law. It is violation of trust and respect in an important institution of marriage in Indian society. It refers to the act of non-consensual sexual intercourse by one spouse with another within a marriage. Despite the fact that over 150 nations have criminalized marital rape, India still has not recognized it as a crime, which has become a significant concern worldwide. Not criminalizing marital rape is against fundamental rights of women and this social stigma continues to reinforce the deep-rooted social inequalities that exist in our society. Due to a lack of legal recognition, victims are left with limited legal remedies and no hope of justice, which leads to physical and emotional trauma.

This article concerned about the historical context, legal challenges and social and economic aspect to criminalize marital rape in India. It reflects how existing laws on domestic violence and cruelty fall short in prosecuting the issue, accepting the denial of women's sexual autonomy. Further, it includes comparative analysis of worldwide legal frameworks to focus on the importance of criminalizing marital rape. It is a moral and human rights duty that India must consider to honoring the dignity and equality of women.

**KEYWORDS:** Rape, marital rape, criminalization, consent, sexual intercourse

---

<sup>1</sup>Intern at Lex Lumen Research Journal.

---

## INTRODUCTION

Marital Rape in India represents one of the most crucial issues that has come to light in the recent years, yet it continues to be unaddressed within the legal system. Marital rape is the act of non-consensual sexual intercourse with one's spouse. Although rape is criminalized under Section 375 of the Indian Penal Code (IPC) and now in the new criminal law under Section 63 of Bhartiya Nyaya Sanhita (BNS), the exception clause states that sexual intercourse by a husband with his wife, if she is over the age of 18 years, is not considered rape. Unfortunately, in India the institution of marriage is considered as a license for unrestricted sexual access. The belief that marriage implies continuous consent has created a threatening environment where many married women suffer in silence, unable to seek justice. Such a provision not only denies bodily autonomy of women but also contradicts the Constitutional principles equality, freedom and dignity within the institution of marriage.

The need for its legal recognition is crucial to ensure justice for victims and provide a wider concept of consent. This article delves into the historical, socio-cultural, legal and psychological dimensions of marital rape in India, its impact on women live and presents arguments for its criminalization.

## HISTORICAL CONTEXT OF MARTIAL RAPE IN INDIA

India has historically been a patriarchal society that considers marriage as a holy union and sacrament in which the wife is expected to be obedient to her husband and holds subordinate position. The concept of "pativrata" (devotion to one's husband) is deeply rooted in Hindu culture, where a wife is generally expected to give priority to her husband's needs over her own. Hindu scriptures like Manu smriti highlights that it is the duty of the wife to serve her husband, even sexually. The custom of Sati, in which a widow was supposed to sacrifices herself on her husband's funeral pyre, shows the cultural perspective that a woman's life is closely linked to her husband's. All these cultural and religious beliefs lead to the perception that consent is automatically given within marriage and that perpetuates marital rape in India.

Moreover, in India laws regarding marital rape have been shaped by colonial legal system. Indian Penal Code, 1860, which was drafted under British rule, did not recognize marital rape as a crime and this perspective has continued in spite of several movements advocating for women's rights.

## LEGAL FRAMEWORK RELATED TO MARITAL RAPE

Several countries criminalize marital rape, still India is exception in adopting laws related to criminalizing marital rape. In India the legal framework for rape is defined under Section 375 of IPC/ Section 63 of BNS defines rape and certain circumstances under which the offence shall be classified as rape. For the purpose of this section, it also explains the "vagina" and "consent". However, the provision mentions two exceptions. Exception 2 of Section 375 states, "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape"<sup>2</sup> and in Section 63 of BNS the age is increased from 15 to 18 years. This exception completely ignores the principle of consent in a marriage. In October, 2017, the Supreme Court, in the case of *Independent Thought v. Union of India*,<sup>3</sup> increased the age to 18 years. However, the SC did not consider the issue of marital rape involving those who are above 18 years of age.

Although the law doesn't make marital rape a crime, there is a particular form of marital rape that is considered as illegal i.e. non-consensual sexual intercourse between the husband and wife when they are living separately due to judicial separation or otherwise. Section 376B of IPC states: "*Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment between two to seven years, and shall also be liable to fine*".<sup>4</sup> It suggests that in section 375 of

---

<sup>2</sup> Indian Penal Code, § 375, No.45, Acts of Parliament, 1860 (India).

<sup>3</sup> *Independent Thought v. Union of India*, (2017) 10 SCC 800.

<sup>4</sup> Indian Penal Code, § 376B, No.45, Acts of Parliament, 1860 (India).

IPC, consent is assumed as cohabitation implies that the wife has given her consent to sexual intercourse with her husband but that is not the case in section 376B as the wife and husband are not living together. Now, this provision is incorporated in Section 67 of (BNS).

Marital rape is forbidden under the Protection of Women from Domestic Violence Act, 2005 (PWDVA). So, the victims of marital rape must turn to it for aid. However, it only provides civil remedies for this offence. This highlights the necessity to give legal recognition to marital rape in order to provide adequate legal remedies and protection to the victims.

## OBSERVATIONS AND VIEWPOINTS OF THE JUDICIARY

On October, 2024, the Central government filed an affidavit was filed by the Central Government on October 2024, against the elimination the marital rape exception and arguing that the term is “excessively harsh and therefore, disproportionate” in respect to marriage.<sup>5</sup> The Union government file a counter affidavit opposing any court intervention, stating that the decision to criminalize marital rape should rest with Parliament. It also stated the married women are already protected by existing laws, like those addressing domestic violence and cruelty.<sup>6</sup>

In 2022, the division bench of the Delhi High Court delivered a split judgement with Justice Rajiv Shakhder in favor of removing the marital rape exception as it is violation of Article 14 of Indian constitution, therefore, unconstitutional.<sup>7</sup> Later in 2023, the Gujarat High observed that rape remains rape, no matter if it is committed by the victim’s husband, emphasizing the urgent need to break the silence regarding sexual violence against women in India.

---

<sup>5</sup> Ananthakrishnan G, *Centre argues against labeling marital rape as ‘rape,’ says it is ‘disproportionate’ and ‘harsh’*, indianexpress.com, (Jan. 26, 2025, 2:30 PM).

<sup>6</sup> Bar and Bench, <https://www.barandbench.com/news/marital-rape-case-live-updates-supreme-court> (Jan. 26, 2025, 3 PM).

<sup>7</sup> Soibam Rocky Singh and Jagriti Chandra, *‘Delhi HC Delivers Split Verdict on Marital Rape’*, The Hindu (Jan. 26, 2025, 4:15 PM), <https://www.thehindu.com/news/cities/Delhi/delhi-high-court-delivers-split-verdict-on-marital-rape/article65403832.ece>.

In September, 2022, the SC ruling regarding women's right to safe abortions, irrespective of their marital status, stated that for the Medical Termination of Pregnancy Act, marital rape should be a part of definition of rape.<sup>8</sup> In 2013, Justice Verma Committee proposed striking down the exemption for marital rape. However, the Parliamentary Standing Committee on Home Affairs rejected this proposal, arguing that firstly, if they were to do that, it would impose a significant pressure on the entire family structure. Secondly, sufficient remedies already exist in criminal law, by the means of the concept of cruelty as defined in Section 498A of IPC.<sup>9</sup>

## CONTRADICTIONS WITH CONSTITUTIONAL PROVISIONS

The exception of marital rape violates several fundamental rights enshrined in Indian Constitution:

- **Violation of Article 14:** Article 14 promotes equality in all sphere and states that 'Everyone is equal in the eyes of law'. It emphasizes that "the state shall not deny any person equality before the law or equal protection of the laws".<sup>10</sup> The marital rape exception is a violation of Article 14 as it discriminates against married women by denying them the same protection against rape as provided to unmarried women.
- **Violation of Article 15:** Article 15 is the expansion of Article 14 and it prohibits discrimination on the grounds of "religion, race, caste, sex or place of birth".<sup>11</sup> Because it discriminates against women based on their marital status, the exception to marital rape is a violation of Article 15.

---

<sup>8</sup>Utkarsh Anand, 'Court Grants Abortion Rights for Marital Rape', Hindustan Times (Jan. 27, 2025, 12:30PM), <https://www.hindustantimes.com/india-news/court-grants-abortion-rights-for-marital-rape-101664474604464.html>.

<sup>9</sup> Raveena Rao Kallakuru & Pradyumna Soni, *CRIMINALISATION OF MARITAL RAPE IN INDIA: UNDERSTANDING ITS CONSTITUTIONAL, CULTURAL AND LEGAL IMPACTS*, 11 NUJS L. Rev. 121, 127 (2018).

<sup>10</sup> India Const. art. 14.

<sup>11</sup> India Const. art. 15.

- **Violation of Article 19(a):** Article 19 guarantees “the right to freedom of speech and expression”.<sup>12</sup> But a woman's freedom to voice her concerns about her bodily autonomy and to seek protection is taken away by the exception to marital rape. By not recognizing marital rape, the law ignores the rights of married women and silences their voices about consent and safety. Hence, contradicting the principle enshrined in the Indian Constitution.
- **Violation of Article 21:** According to Article 21, “No person may be deprived of his life or personal liberty, except in accordance with legal procedure”.<sup>13</sup> The exception in the aforesaid section limits a woman's freedom to express herself sexually. In case of Justice K.S. Puttuswamy (Retd.) v. Union of India, the SC recognized the right to privacy as a fundamental right under Article 21.<sup>14</sup> In State of Karnataka v. Krishnappa, the SC held that sexual violence unlawful intrusion of a woman’s right to privacy and personal sanctity.<sup>15</sup> Hence, forced sexual cohabitation is deemed to be an infringement of the basic right as laid down under Article 21.

Therefore, we need various legal procedures and amendments in law to criminalize marital rape to protect the honor, dignity and rights of a woman after marriage and promote gender equality in the country. There is a need to remove the exception clause of marital rape in IPC and BNS as it is arbitrary and unconstitutional. Moreover, this exception is not in accordance with the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Universal Declaration of Human Rights (UDHR).

## EFFECTS OF MARITAL RAPE

---

<sup>12</sup> India Const. art. 19(a)

<sup>13</sup> India Const. art. 21

<sup>14</sup> K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 SCC 1

<sup>15</sup> State of Karnataka v. Krishnappa, (2000) 4 SCC 75

Marital rape has profound and long-lasting effect on a victim's psychological, physical, social and economic well-being. The lack of legal recognition further aggravates the trauma experienced by the survivors.

## **1. Impact on Mental Well-being**

Marital rape is a mental trauma in itself. Marriage in Indian society is dependent on trust and respect between the partners. It is believed that man and women enjoy equal status in the institution of marriage. But the truth is that marital rape can result in post-traumatic stress disorder (PTSD) depression, anxiety disorder and other psychological trauma. Victims sometimes feels the guilt, hopelessness and shame, which can excessively impact their self-esteem and mental health. Many victims go through PTSD, which can show up as vivid flashbacks, disturbing nightmares, emotional detachment and hypervigilance. Sometime the trauma can also lead to suicidal thoughts and self-harm, particularly when victim feels trapped in relationship with no legal remedies.

## **2. Physical Health Implications**

Forced sexual activities may cause fractures, internal bleeding, bruises and other physical injuries to the victims. It can cause sexually transmitted infections (STIs) and Urinary Tract Infection (UTIs). Due to distress, it can cause miscarriage, stillbirth and pregnancy problems. Additionally, it may cause the victim to avoid sexual intimacy, which could harm their relationships and general well-being.

## **3. Effects on Social dynamics and Family Life**

As already discussed above marriages are an important institution in Indian society. Marital rape can severely harm trust and emotional bonds in relationships. It sometimes leads to separation or divorce. For victims, the fear of intimacy and trauma from their past experiences can make their life more painful and it really difficult for them to build new relations.

In India, Women who bravely come forward and speak about the sexual violence, often find themselves blamed, judged and isolated by the society. This fear of losing dignity and honor in the society makes it difficult for the victims to seek help or leave abusive

---

relationships. It is often seen that boys with abusive fathers might adopt violent behaviours, continuing the abuse cycle whereas girls may face issues with low self-esteem and fear of relationships.

#### **4. Legal and Economic Repercussions**

In countries like India, where marital rape is not recognized as a crime, victims struggle to find legal support. They face several challenges in the procedure, investigation and trial, which deepens their trauma and vulnerability. The victims have to face unsupportive behaviour of police, complicated legal system and pressure from the society to maintain their marriage. This lack of recognition perpetuates the notion that the husband has an inherent right over his wife's body, regardless of her consent.

Our society still is man dominated. Women after marriage believes that they have to live their life on the mercy of their partners. Indian belief makes the husband as God for his partner. Women largely in rural areas are financially dependent over their husbands, making it difficult for them to leave their abusive marriage and to seek help. If such woman decides to leave, she may face difficulties in finding a job and a place to live, particularly if she has children to look after.

#### **5. Barriers to Gender Equality and Women's Empowerment**

The non-recognition of marital rape is one of the major hinderances to gender equality and women's empowerment. In Indian society it is presumed that marriages give the right of control to the men over her partner which leads to the idea that women have no autonomy over their own bodies. Not criminalizing marital rape sends a message that marriage implies irrevocable consent to sexual intercourse. This belief not only hinders progress towards gender justice but also creates an unsafe and threatening environment for women in their own homes.

### **INTERNATIONAL PERSPECTIVES ON MARITAL RAPE LEGISLATION**

United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 and it was authorized by 189 states. India's decision to not criminalize



---

marital rape strongly contradicts its obligations under International agreements like the Universal Declaration of Human Rights (UDHR) and CEDAW. However, there are several countries which have acknowledged marital rape as a criminal act, highlighting a global trend aimed at protecting women's sexual autonomy. Some of these countries are:

- **United States**

Marital rape is a criminal offence in all the 50 states of the U.S. However, legislation may vary from state to state. Initially, a lot of states had laws that allowed for marital exceptions like India's, but, over time, these were progressively eliminated due to feminist activists and changing views in society.

In 1984, the case of *Thurman v. City of Torrington*, it was emphasized that domestic and sexual violence within marriage should be regarded as serious offences.<sup>16</sup>

- **United Kingdom**

In United Kingdom, the law criminalizes rape, spousal rape and domestic violence with the maximum punishment of life imprisonment. In 1991, the landmark case of *R v. R* criminalized marital rape, where the House of Lords ruled that the idea of marriage implies irrevocable consent was outdated and that forced sex in marriage constituted rape.<sup>17</sup> The Sexual Offences Act 2003, provides that marital rape is treated the same way as other forms of rape.

- **Australia**

Marital rape is a criminal offence in all Australian states and territories. South Australia was the first state to criminalize marital rape in 1976 and Queensland was the last to do so in 1992. Section 73 of the Criminal Law Consolidation Act Amendment Act 1976 (SA) define marital rape in Australia.

---

<sup>16</sup> *Thurman v. City of Torrington, Connecticut*, 595 F Supp 1521 (DC Cir 1984)

<sup>17</sup> *Regina Respondent and R. Appellant*, [1992] 1 A.C. 599

- **Canada**

Canada criminalized marital rape in the year 1983. Under the Criminal Code of Canada, rape of men or women including spousal rape is criminalized. The law recognizes sexual assault with punishment varying from 10 years to life imprisonment.

In South Africa, Article 5 of the Prevention of Family Violence Act, 1993 criminalizes marital rape. Its definition of rape includes penetration with any object and non-consensual sexual intercourse within marriage.

## **CHALLENGES IN CRIMINALIZING MARITAL RAPE**

### **1. Legal Challenges**

There are several legal challenges in enforcing marital rape as marriages are religious institutions and it is difficult to prosecute marital rape as a criminal offence as there is chance of breaking of families. It affects the conjugal relations between the couple. It is legally difficult to justify marital rape as a criminal offence without a clear legal framework. There is likely a chance of misusing the marital rape as weapon by the women.

### **2. Social Dynamics and Challenges**

In our society we still strongly believe that marriage is made in heaven. It is deep-rooted belief in the Indian society that husband has unlimited rights over his wife. Sometimes, women have to face family pressure just to save and protect family honor. It discourages her to proceed and prosecute marital rape. India's personal laws like Hindu, Muslim, Christian, etc., regulates marriage, making it difficult to introduce a uniform law addressing marital rape.

### **3. Challenges in Legal Prosecution and Evidence Collection**

As there is no concrete and strong procedure in the law related to marital rape it is difficult to justify whether it is consent or forced marital relationship. It is difficult to prove a specific act as non-consensual. Moreover, marriages are sensitive matters

---

in the societies and the burden of proof rest on the victim to establish the occurrence of offence. Sometimes, our judicial system advice the victim to settle the matter outside the court and police also discourage women from filing complaint and pursue legal action for the sake of saving the family.

#### **4. Economic and Financial Challenges**

India has a large population, poverty and illiteracy. Families mostly in rural areas are headed and controlled by men. Women largely depends on their husbands financially. Prosecution in legal system requires economic support and it is difficult for the victim to sustain with no means of living. This financial insecurity is the major economic and financial challenge to prosecute marital rape offender.

### **PATH TO REFORM: ADDRESSING MARITAL RAPE LEGISLATION IN INDIA**

Though there is no effective judicial system and procedure to convict marital rape offender but cases related to marital rape within the family increased over the years. In order to overcome this social challenge, legal system must ensure some legal and social reforms to address the issue of marital rape for protecting the rights and dignity of the victims.

#### **1. Reforms in Legal System**

Marital rape should be defined separately in the law. The marital rape exception in Section 375 of IPC and Section 63 of BNS must be revoked. A special law on marital rape describing consent, force, penalties, evidence of coercion and legal procedures should be enacted. The law must provide legal protection and harsh punishment or penalties or both to the offender by establishing special fast-track courts. The law should strengthen the victim through criminalizing sexual violence within the marriage and also ensure that the victim should not face financial distress as well.

The approach of the court towards the victim must be friendly so that the offence that occurs in private may not provide chance of escape to the offender. Court

---

should focus largely on victim testimony and psychological evidence rather than physical evidence.

The investigation should be by the trained police officers so that the cases as well as the victim be handled with sensitivity and professionalism. Helpline centers should be established so that the victim of marital rape come forward without fear.

## **2. Social Reforms**

The problem of marital rape in the society is more concerned with social rather than the legal subject. Marriages are major institutions in the society. It is the backbone of the healthy society. Awareness campaigns should be derived time to time to emphasize that marriage does not mean permanent consent. The woman has all the right to refuse sexual intercourse as per her will or wish any time.

Educational institutes must introduce curriculum on consent, bodily autonomy and gender rights to educate young generation. Public awareness programs should be launched to educate about ethical aspects of marital consent.

## **3. Economic Reforms**

Indian families are largely dependent on their member for their financial economic support. The women in the family have to face fear and abuse just to survive and save their marriages. There should be a strong financial support within the system to protect victim. The government should establish compensation policy, employment policy, rehabilitation services, medical counseling, etc to heal the victim from the psychological effects and social stigma of marital rape. It is the responsibility of the society as well as the media ensuring that victim or survivors must be treated with dignity.

---

## CONCLUSION

Marital rape is concern for our society. As our economy is advancing the mentality of our people is degrading day by day. Many things are responsible for this, such as, entertainment industry normalizing concepts like rape, marital rape, domestic violence. The number of these cases has increased since the infamous pandemic but it is to be noted that many such cases are still not reported. It is a shame on our society that we prioritize communal violence over upliftment of women in our country. It is high time that the government should enact strict laws against marital rape as it is a heinous crime and supports patriarchy in its finest form. Criminalizing marital rape will not only provide protection and support to the victims but also sends a powerful message that such heinous acts are not acceptable and consent is paramount, regardless of marital status. It's our duty to ensure that everyone feels safe and valued in our society, and brutal acts of marital rape should be condemned and punished.

## REFERENCES

- Sanya Agarwal, *Marital Rape in India and its Impact*, 3.2 JCLJ 747, 752-754 (2023).
- Sonakshi Singh, *Intimacy, Consent and Boundaries : A Closer Look at Marital Rape*, 4.3 JCLJ 930, 934-935 (2024).
- Aditi Singh, *Marital Rape in India : An Atrocious Offense*, 4.2 JCLJ 871, 878-879 (2024).
- Independent Thought v. Union of India, (2017) 10 SCC 800.
- K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 SCC 1.
- State of Karnataka v. Krishnappa, (2000) 4 SCC 75.
- REGINA RESPONDENT AND R. APPELLANT, [1992] 1 A.C. 599.
- Ananthakrishnan G, Centre argues against labeling marital rape as 'rape,' says it is 'disproportionate' and 'harsh', The Indian Express, (Jan. 26, 2025, 2:30 PM), <https://indianexpress.com/article/india/centre-sc-criminalising-marital-rape-9602198/>.
- Soibam Rocky Singh and Jagriti Chandra, 'Delhi HC Delivers Split Verdict on Marital Rape', The Hindu (Jan. 26, 2025, 4:15 PM),

---

<https://www.thehindu.com/news/cities/Delhi/delhi-high-court-delivers-split-verdict-on-marital-rape/article65403832.ece>.

- Utkarsh Anand, 'Court Grants Abortion Rights for Marital Rape', Hindustan Times (Jan. 27, 2025, 12:30PM), <https://www.hindustantimes.com/india-news/court-grants-abortion-rights-for-marital-rape-101664474604464.html>.
- Raveena Rao Kallakuru & Pradyumna Soni, *CRIMINALISATION OF MARITAL RAPE IN INDIA: UNDERSTANDING ITS CONSTITUTIONAL, CULTURAL AND LEGAL IMPACTS*, 11 NUJS L. Rev. 121, 127 (2018).
- India Const. art. 14.
- India Const. art. 15.
- India Const. art. 19(a).
- India Const. art. 21.
- Wikipedia, *Marital rape laws by country*, Wikipedia (Jan. 27, 2025, 11:30AM), [https://en.wikipedia.org/wiki/Marital\\_rape\\_laws\\_by\\_country](https://en.wikipedia.org/wiki/Marital_rape_laws_by_country).

