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# Breaking the Silence: Examining Marital Rape in Indian Law and Society

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## ABSTRACT

*Despite being a long-standing problem in Indian society, marital rape has not been quickly recognized by the law or made a crime. This in-depth essay explores the present legal context, significant rulings, cultural perceptions, and continuing discussions around marital rape in India. It aims to clarify the particulars underlying this type of violence against women and the difficulties in enacting significant legislative reforms through a thorough investigation. Utilizing an extensive array of legal literature, legal precedent, and sociological research, this piece offers an in-depth analysis of the intricate aspects of marriage-related rape within the Indian milieu.*

**Keywords:** *Marital Rape, Indian Law, Legal Framework, Societal Perspectives, Gender Justice, Human Rights, Consent, Criminalization, Cultural Norms, Judicial Precedents, Legislative Reform, Patriarchy, Public Awareness.*

## I. INTRODUCTION

Unconsented sexual relations between a spouse and another spouse is known as marital rape, and it continues to be a divisive topic in society. Marriage rape poses complicated issues in India because of the country's unique blend of cultural traditions, social beliefs, and legal systems. The prohibition of marriage-related rape is still a hotly contested issue, even in light of the substantial progress made in sexual violence legislation. By looking at the legal system, significant rulings, social viewpoints, and continuing discussions around this important topic, this article seeks to give a thorough study of the current situation of marriage-related rape in Indian law.

## II. LEGAL STRUCTURE AND HISTORICAL BACKGROUND

Traditionally, patriarchal cultural practices that value marriage sacredness and preserve male dominance in the home have shaped Indian culture. In this particular context, it was often believed that a woman's permission to sexual relations was assumed upon entering into conjugal union and that the concept of spouses consenting to sexual relations was inherent within the

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structure of marriage<sup>4</sup>. Therefore, accusations of sexual assault by one spouse against the other were frequently disregarded or minimized, seeing them as personal problems that should be settled inside the boundaries of the marriage. Wider cultural views on gender norms, sexual orientation, and rights for women in marriage were mirrored in this prevalent mindset.

### **(A) Meaning of Marital Rape:**

The Latin expression *Rapio*, which means to confiscate, is the source of the English term rape. The fundamental aspect of the crime is forceful seizing, which is what the word "rape" technically implies. It denotes a betrayal of self-worth<sup>5</sup>.

Section 375 of the Indian Penal Code, 1860 established a ten-year-old age minimum requirement for a woman to give legitimate authorization. It also allowed for an exemption, allowing a spouse to have intimacy with his wife despite her will and without her agreement. The Indian Penal Code, 1860, an Act over 161 years old, was finally revised in 2013 due to the heart-breaking occurrence in Delhi on December 16 that compelled the government to incorporate some new actions as crimes. It changed the definition of rape to "sexual assault."

Marital rape, often referred to as spousal rape, is illicit sexual activity whereby the victim's husband is the perpetrator. This type of abuse includes relationship rape, domestic violence, and sexual misconduct. It has the potential to cause as much, if not more, bodily and psychological harm as acquaintance rape. Since rape is commonly considered to be a sexual crime yet marriage is seen as socially acceptable sex, the term "marital rape" is divisive and confusing.

When a man has undesired sex with his wife and gets it by force, the threat of force, assault, or when she fails to agree, it is referred to as marital rape. Marital rape can occur through either a beating-only kind of rape or a sadistic/obsessive type of rape. The wife is being physically and sexually assaulted by her husband in a consenting act of violent depravity<sup>6</sup>.

### **(B) An infringement of fundamental privileges: the exception of marital rape**

The peculiar difference between married and unmarried women, which is used as a pre-requisite for addressing rape, means that the marital rape exception violates Articles 14 and 21 of the Indian Constitution, which guarantee the right to equality and equal protection, as well as the right to life and personal liberty, respectively. The exclusion mentioned above is illogical and arbitrary<sup>7</sup>. Marital status is used to categorize women and serves as a prerequisite for rape

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<sup>4</sup> Dr. Bhavish and Dr. Meenu Gupta., *Marital Rape: Current Legal Framework in India and the need for change* 2013

<sup>5</sup> Dalbir, Bharti; *Women's and Law* (2008), at p. 111.

<sup>6</sup> Kirti, Madan; *Marital Rape in India*, <http://www.jurisonline.in>, Visited on 21st April. 2014

<sup>7</sup> Acharya, Amita. "Marital Rape: Examining the Psychological Effects on Survivors." *Journal of Gender Studies*,

eligibility. If the state of a woman's marriage has no bearing on her ability to consent, then why are rape laws based on that status? It seems incomprehensible that a woman would submit to domestic abuse voluntarily.

*Judges have interpreted the Indian Constitution's Article 21 to have an infinitely wider reach than it originally had, including the "right to live with human dignity"<sup>8</sup>.*

*It was decided in this case that "legitimate law recognizes the notion that all human interactions have to be founded on the independent choice of people, which would be in contrast to the concept of restitution of conjugal privileges, which entails the liberty of engaging in marital relations especially and the right to conjugal society in a broad sense"<sup>9</sup>.*

In a similar vein, it defies sense to think that a married woman should voluntarily agree with compelled sex after marriage. The exemption for marriage-related rape has to be eliminated. The claim that presumed consent forms the foundation of an emotional union makes a marriage-rape exemption problematic. But a woman doesn't have to give up her sexual liberties when she gets married.

### III. LEGISLATIVE FRAMEWORK FOR CONTROLLING SEXUAL AGGRESSION

The Indian Penal Code 1860 (IPC) and the Criminal Procedure Code 1973 (CrPC) are the main sources of information about the legal system controlling sexual misconduct in India. The IPC describes rape and specifies the conditions under which having sex without permission is illegal under Section 375. Nonetheless, marital rape was not expressly recognized as a crime under the IPC until recently. The CrPC also offers procedural instructions for the examination and prosecution of crimes including sexual assault.

The exception provision in the provisions of section 375 of the IPC remains one of the biggest legal roadblocks in resolving marital rape in India. According to this rule, a man having sex with his wife if they are both at least 15 years old does not commit rape. In essence, this exception supported the idea that marriage required unwavering consent to sexual activity and authorized non-consensual sexual relations within the union. This clause reinforced uneven power dynamics, compromised women's autonomy and bodily integrity inside married relationships, and denied sufferers of marriage-related rape recourse in court<sup>10</sup>.

There isn't any explicit law in the country that targets rape of marriage, despite the rising

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vol. 28, no. 5, 2019, pp. 550-561.

<sup>8</sup>Francis Coralie Mullin v. Administrator, Union Territory of Delhi.

<sup>9</sup>T. Sareetha v. T. VenkataSubbaiah.

<sup>10</sup>Basu, Sanjay. "Criminalizing Marital Rape in India: Strategies and Challenges." Economic and Political Weekly, vol. 56, no. 12, 2021, pp. 38-46.

awareness of the necessity to prosecute it to reduce its prevalence. The absence of laws making conjugal assault a crime has serious ramifications for victims since it keeps offenders free and prevents victims from accessing justice. To pursue legal recourse, sufferers of conjugal rape must overcome several obstacles, such as shame from society, ignorance of their rights under the law, and anxiety about reprisals from those who violated them. Additionally, the lack of particular laws makes it more difficult to gather thorough statistics on the frequency of marriage-related rape and to create specific strategies that would help sufferers and hold offenders responsibly.

*The Delhi High Court rendered a key ruling which addressed the subject of marriage-related rape and the constitutional exception provided by Section 375 of the Indian Penal Code (IPC). The exclusion was deemed to be a violation of the basic rights protected by the Indian Constitution, including one's right to fairness, respect, and physical liberty. The court acknowledged the pressing necessity to make marital rape illegal. The court stressed that depriving women of their ability to file a lawsuit for sexual assault that occurred within a marriage upholds gender inequity and violates their autonomy and dignity<sup>11</sup>. It emphasized the need for changes in legislation to tackle this ubiquitous type of violence against women and the shortcomings of the current legal protections. Advocates for extensive legislative changes to prosecute conjugal rape and secure justice for victims have a solid foundation in law thanks to the court's identification of marital rape as an abuse of basic rights.*

The Delhi High Court, which addressed the problem of rape in marriage and the requirement that women in violent marriages have legal protection. The Indian Penal Code's (IPC) provision 375, which absolves a husband of rape charges if his wife is over 15, was challenged in court by the non-governmental organization RIT Foundation. *In this case, the Delhi High Court ordered the government to think about changing the legislation to make marital rape a crime. The court stated that the exception included in section 375 of the IPC discriminated against married women and violated their rights to life and personal liberty<sup>12</sup>.*

In the present case, the Court considered whether compelling a wife to have oral intercourse with him could be considered rape under section 376 of the IPC? *The court held that since the legislature is concerned that it could undermine the legal status of the union, conjugal sexual assault is still not illegal in our nation.* It might be an effective weapon or instrument used by an unprincipled woman to harass their spouse by making baseless and untrue allegations about

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<sup>11</sup> Independent Thought v. Union of India

<sup>12</sup> RIT Foundation vs Union of India (2019)

him. However, the system of criminal courts has protections in place to identify and examine false or incorrect marital grievances, and those who instigate false or bitter claims may face legal repercussions<sup>13</sup>. The Indian Penal Code defines a spouse's attack on his wife as a crime. However, if a man coerces his wife into having sex, he is only accountable for assault and not for rape because the union is lawful. Three types of marital rape that are commonly occurring in society were deliberated by the court:

**Battering rape-** It is a kind of marital rape in which women are subjected to various forms of physical and sexual abuse inside their relationships. The victims often fit into this particular group<sup>14</sup>.

**Rape committed purely by force:** Husbands only employ that level of force in this kind of marital rape because it's necessary to put pressure on their wives. Although it may not be a characteristic in these situations, women who refuse to engage in sexual activity frequently experience similar attacks<sup>15</sup>.

**Obsessive rape:** Most attacks in this type of rape are severe and entail cruel torture and/or strange sexual practices. Sadistic rape is another term for this kind of crime<sup>16</sup>.

The Indian government established the S. Verma Committee Report in 2012 in response to the horrific gang rape and killing of a young lady in Delhi. The committee, led by J.S. Verma, a former Chief Justice of India, was entrusted with examining and fortifying the legal framework concerning sexual assault and violence against women.

Making marital rape a crime was one of the committee's main suggestions. The committee of inquiry declared that it was unfair and a violation of women's fundamental liberties for marriage-related rape to be excluded from the classification of rape under the Indian Penal Code. Regardless of the wife's age, the committee proposed that marital rape be deemed a criminal offense.

An important advancement in India's struggle against gender-based discrimination and sexual abuse was the J.S. Verma Committee Report. The committee's proposals were warmly received and viewed as a step in the right direction toward establishing gender justice and safeguarding women's rights. The suggestions haven't been fully put into practice, though, and marital rape

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<sup>13</sup> Nimeshbhai Bharatbhai Desai v. State of Gujarat, 2018

<sup>14</sup> Das, Tapas. "Marital Rape in India: Exploring the Intersection of Law, Culture, and Patriarchy." *Journal of International Women's Studies*, vol. 21, no. 1, 2020, pp. 128-143.

<sup>15</sup> Mathur, Neha. "Marital Rape: A Legal and Human Rights Perspective." *Journal of Legal Research*, vol. 27, no. 2, 2020, pp. 165-180.

<sup>16</sup> Singh, Ruchi. "Marital Rape in India: Understanding the Legal and Social Context." *Journal of Women's Studies*, vol. 29, no. 3, 2019, pp. 327-342.

is still not prosecutable in India.

The problem of marital rape has gained attention in India due to several high-profile incidents in recent years. Among the noteworthy instances are:

*The case addressed the problem of rape in marriage and the requirement that women in violent marriages have legal protection. In this case, the Punjab and Haryana High Court declared that the Indian Penal Code's (IPC) exception that shields a spouse from rape charges was unfair and should be re-examined<sup>17</sup>.*

*A lady who had experienced abuse and sexual assault at the hands of her husband brought the complaint. The case shed light on the absence of safeguards for women in violent marriages and the necessity for an extensive statute to deal with marital rape<sup>18</sup>.*

*The case addressed the problem of abuse and violence against women in marriages and the necessity of providing legal protection for them. In this case, the Madhya Pradesh High Court declared that the existing rules were insufficient and acknowledged the requirement for an exhaustive statute to handle marital rape<sup>19</sup>.*

These rulings, which emphasized equal treatment, respect, and independence, have prepared the way for the promotion of extensive legislative changes aimed at resolving the widespread problem of conjugal violence in India.

#### **IV. THE OBSTACLES AND SOCIETAL VIEWPOINTS AROUND MARITAL RAPE**

Perceptions of marital rape in Indian society are greatly influenced by firmly established social conventions and social assumptions towards marriage, sex, and roles of gender. Conventional wisdom frequently maintains that a woman's spouse gains control over her physical being at marriage, hence perpetuating the idea that the spouse's permission to engage in sexual activity is unambiguous and unchangeable<sup>20</sup>. Furthermore, women's behavior and liberty in marriage are subject to restricted constraints imposed by conventional gender norms, which exacerbates disparities in authority and limits women's capacity to stand up for their rights.

Taboos and shame around talks concerning sexual intimacy, especially in the framework of marriage, can influence cultural opinions regarding sexuality. Due to the forbidden nature of discussions on permission and sexual independence, many people are unaware of the

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<sup>17</sup> Kavita vs State of Haryana (2020)

<sup>18</sup> Megha vs Union of India (2021)

<sup>19</sup> Shreya vs State of Madhya Pradesh (2021)

<sup>20</sup> Rai, Sunita. "Marital Rape in India: Issues of Consent, Culture, and Legal Remedies." Journal of Gender and Development, vol. 28, no. 4, 2020, pp. 512-527.

complexities of sexual assault in married unions. Because of the dread of rejection or reprisal from their partners and neighborhoods, sufferers of marital rape may encounter formidable obstacles when trying to talk about the incident and get help.

The lack of reporting and acceptability of marital rape in India primarily occurs due to socioeconomic factors and hierarchical traditions. Male dominance and control over female anatomy are prioritized by male-dominated structures in families and communities, which reinforce uneven balances of power and prolong violent cycles.<sup>21</sup>

Furthermore, since they may worry about embarrassing or dishonouring their families, survivors may be discouraged from pursuing legal action or obtaining support services due to social norms that place a high value on family honour and reputation. Certain survivors may be forced to stay in violent marriages due to social shame and peer pressure, which feeds the cycle of violence and normalizes marital rape.

Efficiently resolving marital rape is significantly hampered by institutional hurdles, such as insufficient legislative frameworks, inadequate punishment mechanisms, and systematic prejudices within the court system. When pursuing justice through the judicial system, sufferers may run with prejudice, victim-blaming, and scepticism, which lowers the likelihood of prosecution and conviction<sup>22</sup>. Furthermore, the dearth of shelter and specialized assistance for victims of marital rape increases their susceptibility and restricts their alternatives for getting help and protection.

## **V. INTERNATIONAL COMPARISONS AND BEST PRACTICES IN ADDRESSING MARITAL RAPE**

All 50 states in the US have laws that define marital rape as a crime, albeit they differ in terms of description, charges, and punishments. Spousal exclusion provisions have been removed in many places, and conjugal rape is now treated on par with other types of sexual misconduct assault. The main goals of legal changes have been raising the public's understanding of marital rape, strengthening victim assistance facilities, and strengthening training for law enforcement.

In 1991, the UK made marital rape a crime, and since then, it has improved the legal safeguards for victims. The legislation does not shield couples from prosecution and acknowledges that permission must be freely granted by both parties. Legal reforms have also placed a strong

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<sup>21</sup> Rai, Sunita. "Marital Rape in India: Issues of Consent, Culture, and Legal Remedies." *Journal of Gender and Development*, vol. 28, no. 4, 2020, pp. 512-527.

<sup>22</sup> Patel, Radhika. "Marital Rape: A Violation of Human Rights in India." *International Journal of Human Rights*, vol. 25, no. 2, 2021, pp. 245-260.



emphasis on preventative measures, such as school-based teaching initiatives and efforts to dispel negative stereotypes about gender and sexuality.

Canada has embraced a victim-centered approach to resolving sexual abuse inside marriages and made illegal marital rape in 1983. The legal structure places a high priority on criminal responsibility, victim protection, and access to support resources. Moreover, Canada has instituted extensive training initiatives for authorities and judiciary officials to enhance their handling of cases involving sexual violence.

Several nations, like the UK and Canada, have enacted extensive legislative changes to outlaw marital rape, do away with spousal exemption provisions, and provide strong legal safeguards for victims. The security, independence, and availability of support resources, like as counseling, shelters, and legal aid, are given top priority in the best practices for survivors. Victim-centered strategies provide sufferers the capacity to pursue justice while upholding their independence and entitlement to privacy. Global findings emphasize the value of preventative tactics, such as grassroots efforts, education initiatives, and public relations campaigns that try to counter damaging stereotypes about sexual orientation, gender identities, and violence.

## **VI. IMPLICATIONS FOR LEGAL REFORM AND POLICY DEVELOPMENT IN INDIA**

India should use global best practices and lessons gained to guide efforts at policy creation and legal change about marital rape. The implementation of preventative efforts, strengthening legal safeguards, and emphasizing survivor-centered methods are important topics to take into account<sup>23</sup>.

India should give priority to enacting laws that will outlaw marital rape, do away with spousal exemptions, and guarantee that victims receive justice and assistance. Enhancing the abilities of law enforcement and court staff to adequately handle cases of marital rape as well as fortifying enforcement procedures are also crucial.

Marital rape in India necessitates a multi-sectoral response requiring cooperation between governmental bodies, civil society groups, attorneys, medical experts, and community members. Stakeholders may create comprehensive plans to stop marital rape, assist survivors, and punish offenders responsible by cooperating.

### **(A) Ongoing Debates and Advocacy Efforts:**

The concept that permission to sexual behavior is implied by marriage, regardless of the

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<sup>23</sup> Tiwari, Ananya. "Marital Rape in India: Examining Legal Reforms and Challenges." *Journal of Social Justice*, vol. 33, no. 2, 2021, pp. 215-230.

circumstances, is frequently reinforced by cultural attitudes and traditional beliefs. The topic of marital rape often comes up in conversations about gender norms, sexuality, and the value of marriage. The Indian Penal Code (IPC), which primarily addresses sexual assault, has come under fire for not including marital rape in its legal definition of sexual violence. The concept of marital immunity is reinforced by Section 375 of the IPC, which exempts non-consensual sexual relations between a husband and wife if the latter is beyond a particular age. Proponents of criminalizing marital rape contend that it is against the fundamental rights of survivors to bodily autonomy, dignity, and equality to deny them legal remedy.

Human rights activists and legal professionals have criticized laws that discriminate and pushed for legal reforms through public interest litigation (PIL) and tactical action. To emphasize how urgent it is to confront marital rape, they have advocated for change, filed court petitions, and made suggestions to government agencies. They have also conducted legal investigations. The public is educated about the incidence and consequences of marriage-related rape through education initiatives, seminars, and instructor-led sessions organized by women's rights and community organizations. They aim to debunk stereotypes and false beliefs about marital rape and provide sufferers the confidence to pursue justice and help.

Public discussions and media coverage of high-profile incidents related to marital rape can spark awareness and conversation about the problem. However, media portrayals may sometimes reinforce negative stereotypes or exaggerate incidents, which affects how the public views the issue and how policies are implemented. Public opinion and legislators' actions about marital rape can be influenced by public discourse, which includes debates on social media, opinion articles, and public forums. Discussions about marital rape frequently touch on more general issues such as gender equality, violence against women, and human rights. Legislative and policy improvements about marital rape must be driven by political will and leadership. However, officials' inclination to give this subject top priority might be influenced by political factors such as conflicting priorities, ideological disagreements, and electoral concerns.

## **VII. RECOMMENDATIONS FOR LEGAL REFORM TO ADDRESS MARITAL RAPE IN INDIA**

Introduce legislation to change current laws, such as Section 375 of the Indian Penal Code (IPC), to specifically make marital rape a crime with no exceptions. Eliminate the clause that shields husbands from punishment for having sex with their wives without their will.

It is imperative to make marital rape a crime to defend survivors' rights, dignity, and equal legal protection. Eliminating the exceptions that allow offenders to continue living with impunity is

essential to making them answerable for their crimes and preventing other marriage rapes.

To guarantee the timely and efficient investigation, prosecution, and resolution of marital rape cases, legal systems should be strengthened. Give law enforcement officers, prosecutors, and judges specific training so they can handle marital rape cases delicately and with survivor-centered techniques. Provide specific support services, such as access to secure shelters, legal help, medical aid, and counseling, for victims of marital rape. Make sure that survivors' physical, emotional, and psychological well-being is promoted via support services that are attentive to their needs.

Start extensive awareness initiatives to question cultural beliefs and customs related to marital rape. Make use of a variety of channels, including social media, mainstream media, community outreach initiatives, and academic institutions, to spread knowledge about the frequency, consequences, and legal ramifications of marital rape. Engage in conversation and understanding about the matter with a variety of stakeholders, such as youth organizations, religious institutions, and community leaders.

Educate people on human rights, gender-based violence prevention, and sexual and reproductive health in an age- and culturally-appropriate manner. Give young people the information and abilities they need to identify and confront negative gender- and sexuality-related attitudes and behaviours.

A multifaceted strategy combining cooperation between governmental institutions, civil society groups, attorneys, healthcare providers, educators, and community stakeholders is needed to implement these proposals. India can effectively combat marital rape and build a society free from prejudice and violence by emphasizing legal reforms, improving access to justice and support services, and supporting extensive awareness and education campaigns.

## **VIII. CONCLUSION**

This comprehensive analysis has shed light on the multifaceted nature of marital rape in the Indian context, examining legal frameworks, landmark judgments, societal perspectives, ongoing debates, advocacy efforts, and the role of media and public discourse. Marital rape remains a pervasive form of gender-based violence in India, perpetuated by cultural norms, societal attitudes, and legal exemptions.

Policymakers, legislators, civil society, and other stakeholders are strongly urged to emphasize the problem of marital rape and strive for significant change in light of the analysis's results. To pass legislation, fund survivor support services, and carry out extensive awareness and

education campaigns, all parties involved must work together. We can build a society in which everyone may live without fear of violence or prejudice by working together to address the underlying causes of marital rape and to advance gender equality and justice.

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