

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

Unveiling Injustice: Advocating for Legal Recognition of Marital Rape

GOURI V¹

ABSTRACT

The legal recognition of marital rape remains a contentious issue, with varying laws and societal attitudes across different countries. While many nations have made significant strides in acknowledging marital rape as a crime, others still hold outdated legal views that exempt spouses from prosecution in the context of sexual violence within marriage. This paper explores the historical, legal, and societal dynamics surrounding marital rape, examining the progress and challenges in its legal recognition. By analysing comparative legal frameworks, case studies, and the impact of cultural and gender norms, the study highlights the obstacles victims face in seeking justice. Additionally, the paper discusses the role of advocacy groups and ongoing reforms, offering policy recommendations to strengthen legal protections for survivors of marital rape. The research underscores the need for comprehensive legal reforms to ensure marital rape is universally recognized as a crime, emphasizing its crucial role in the broader fight for gender equality and human rights.

I. INTRODUCTION

Marital rape, the act of forcing a spouse into non-consensual sex, remains one of the most overlooked forms of sexual violence globally. Historically, many legal systems have perpetuated the notion that a husband has an inherent right to sexual access to his wife, a concept rooted in patriarchal values that view marriage as a contract that subjects women to the authority and control of their husbands. This legal and cultural framework has led to the widespread exclusion of marital rape from legal definitions of sexual assault, leaving victims with limited recourse and perpetuating an environment of impunity for perpetrators.

The legal recognition of marital rape has been an evolving process, influenced by changing attitudes toward marriage, consent, and gender equality. In many parts of the world, significant strides have been made in recent decades, with numerous countries passing laws that criminalize marital rape. However, in other regions, marital rape is either not explicitly recognized as a crime, or laws that do exist are insufficient, poorly enforced, or riddled with

¹ Author is a student at Government Law College Thiruvananthapuram, India.

loopholes. This disparity often reflects deep-seated cultural, social, and political factors that continue to hinder progress in fully recognizing marital rape as a violation of human rights.

II. HISTORICAL CONTEXT OF MARITAL RAPE

Historically, the concept of marital rape was virtually non-existent in legal and social frameworks. In many ancient cultures, marriage was seen as a form of ownership, where women were expected to submit to their husbands' sexual desires. This belief that husbands had sexual rights over their wives persisted for centuries, reinforced by religious, cultural, and legal doctrines that positioned women as subordinate within marriage. For much of Western history, the idea that a man could rape his wife was unimaginable in legal terms. English common law, for example, held that a husband could not be guilty of raping his wife because, once married, a woman's consent was considered implied. This view was rooted in patriarchal norms that saw wives as the property of their husbands, and their sexual submission as part of their marital duties.

The concept of marital rape began to be questioned in the 20th century, particularly during the rise of feminist movements advocating for women's rights and gender equality. The feminist movement of the 1970s and 1980s played a key role in challenging the idea that marriage granted men sexual entitlement. Feminists argued that marriage should not be a license for sexual violence and that women, like all individuals, have the right to control their own bodies.

In the late 20th century, many countries began to pass laws criminalizing marital rape, recognizing it as a serious form of abuse. For example, the United States saw its first case of marital rape prosecution in 1976, and in the UK, marital rape became a crime in 1991. This legal shift was part of a broader societal change aimed at recognizing the right to consent and ensuring that intimate relationships are based on mutual respect, rather than coercion or entitlement.

III. LEGAL FRAMEWORKS OF SPECIFIC COUNTRIES

The criminalization of marital rape reveals significant disparities across legal systems, shaped by cultural, religious, and historical contexts. In the United States, marital rape is illegal in all 50 states, but the consistency of its treatment varies. While some states like California and New York impose no special conditions for prosecuting marital rape, others require proof of physical violence or coercion, creating barriers to justice. The federal framework, including provisions under the Violence Against Women Act (VAWA), allows prosecution only in

specific contexts, such as when crimes occur on federal property or involve interstate jurisdictions. Despite legal recognition, enforcement remains complex due to societal norms and prosecutorial hesitancy, particularly in cases where spouses cohabit. The United Kingdom, on the other hand, made a decisive legal shift with the landmark *R v R* ruling in 1991, nullifying the outdated doctrine of implied consent in marriage. The Sexual Offences Act 2003 treats marital rape equivalently to non-marital rape, emphasizing that consent is a legal necessity in all sexual relations. Additionally, the Domestic Violence, Crime and Victims Act 2004 strengthens protections through legal aid and restraining orders, showcasing a progressive and victim-centric legal framework.²

India and Saudi Arabia represent jurisdictions where marital rape remains largely unaddressed in formal law, reflecting deeper cultural resistance to recognizing sexual autonomy within marriage. In India, Section 375 of the Indian Penal Code exempts husbands from rape charges if the wife is above fifteen, sustaining the colonial-era presumption that marriage entails unconditional sexual access. Despite public discourse and advocacy, courts have been reluctant to intervene, citing social norms and potential impacts on marital sanctity. While the Domestic Violence Act of 2005 offers some civil remedies, it falls short of criminalizing sexual abuse within marriage, leaving survivors with limited legal options. In contrast, Saudi Arabia's legal stance is grounded in Sharia law, which places sexual rights primarily under male authority. Marital rape is not acknowledged, and prevailing cultural expectations reinforce the wife's duty to comply with her husband's desires. Despite recent reforms enhancing women's mobility and employment rights, marital rape remains excluded from legal debate, reflecting enduring patriarchal norms.³ These contrasting frameworks highlight how the recognition of marital rape as a crime depends not only on legal statutes but also on societal willingness to challenge patriarchal structures and redefine marital consent.

In the case of *Nimeshbhai Bharatbhai Desai v. State of Gujarat*,⁴ the petitioner was accused by his wife, Nikitaben, of subjecting her to non-consensual vaginal and oral sex, along with other forms of sexual abuse, leading to considerable mental trauma. The primary legal issues before the Gujarat High Court were whether a wife can initiate criminal proceedings for marital rape under Section 376 of the Indian Penal Code (IPC), and whether forced oral sex between spouses constitutes an unnatural offence under Section 377 IPC. The Court observed that Indian law currently exempts husbands from prosecution for marital rape due to the exception under Section 375 IPC, but emphasized that this legal position is outdated and in

² Smart, *Feminism and the Power of Law* (1989), p. 104

³ Baxi, *The Future of Human Rights* (2006), p. 243

⁴ *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, 2018 SCC OnLine Guj 732

urgent need of reform to uphold a woman's bodily autonomy and dignity. Regarding unnatural offences, the Court held that acts like fellatio and cunnilingus do not fall within the scope of Section 377, which traditionally addresses acts like sodomy and bestiality. Consequently, the Court quashed the FIR against the husband but strongly highlighted the necessity for legislative intervention to criminalize marital rape and address the limitations of the existing legal framework.

In *Independent Thought v. Union of India (2017)*,⁵ the Supreme Court examined the constitutionality of Exception 2 to Section 375 of the Indian Penal Code, which permitted sexual intercourse with a wife aged between 15 and 18 without it being considered rape. The key issue was whether this exception violated fundamental rights under Articles 14, 15, and 21 of the Constitution by treating married and unmarried girls differently. The Court found the provision to be arbitrary and discriminatory, holding that it infringed on the right to equality, protection against discrimination, and the right to life and personal liberty of the girl child. It also pointed out that the exception was inconsistent with the Protection of Children from Sexual Offences (POCSO) Act, which criminalizes all sexual acts with minors, regardless of marital status. By striking down this exception, the Court effectively criminalized marital rape involving girls under 18, bringing the law in line with constitutional principles and affirming the protection of minors from sexual abuse.

IV. STRUCTURAL AND SOCIETAL BARRIERS TO JUSTICE

Marital rape continues to exist in a legal and cultural vacuum shaped by patriarchal traditions and outdated legal norms that deny the autonomy of women within marriage. In jurisdictions like India, Exception 2 to Section 375 of the Indian Penal Code exempts a husband from being prosecuted for rape if his wife is above fifteen, reinforcing the regressive notion that marriage implies perpetual and irrevocable consent. This provision has drawn widespread criticism for violating fundamental rights to personal liberty and bodily autonomy guaranteed under constitutional law. Even in countries that have criminalized marital rape, the disparity in how it is prosecuted—often with lighter sentences or higher evidentiary standards than non-marital rape—reflects a systemic reluctance to confront the embedded gender inequality that exists within the institution of marriage. These legal inconsistencies are compounded by cultural narratives that perceive marriage as a sexual contract, rendering the idea of marital rape legally and socially invisible. As a result, victims often face stigma, disbelief, or silence, internalizing societal expectations that they must endure coercion as part of their marital

⁵ AIR 2017 SUPREME COURT 4904, AIR 2018 SC (CRIMINAL) 229

duty.⁶

The judicial approach to marital rape further underscores the challenge of addressing it as a legitimate form of violence. Courts frequently demand corroborative physical evidence and often dismiss a wife's testimony if there are no visible injuries, despite the psychological and emotional coercion that may be involved. This evidentiary burden reflects an outdated understanding of consent, particularly within the private realm of marriage, where judges may still operate under the presumption of implied consent. Moreover, cultural biases and lack of gender-sensitive training can influence judicial reasoning, perpetuating harmful stereotypes that view women as potential fabricators or see marital rape as a lesser offense. The failure to criminalize or effectively prosecute marital rape is not merely a legal shortcoming but a reflection of deep-rooted patriarchal ideologies embedded in both law and society. To ensure justice and uphold constitutional values, legal systems must adopt comprehensive reforms that clearly define consent, eliminate discriminatory exceptions, and hold perpetrators accountable regardless of marital status.

V. GLOBAL ADVOCACY AGAINST MARITAL RAPE: REFORM AND RESISTANCE

Advocacy and reform efforts targeting marital rape have significantly intensified in recent years, propelled by the global movement for gender justice and the growing recognition of women's bodily autonomy. Women's rights organizations across the globe have led the charge by challenging outdated legal provisions, raising public awareness, and supporting victims. In India, for instance, groups such as Independent Thought were instrumental in the legal battle that led to the 2017 Supreme Court ruling, which declared sexual intercourse with a wife under 18 as rape, effectively narrowing the scope of Exception 2 to Section 375 of the Indian Penal Code.⁷ Similarly, in the United States, organizations like RAINN and the National Organization for Women (NOW) have consistently advocated for the uniform recognition and penalization of marital rape across all states, while in the UK, groups such as the Fawcett Society and Refuge have called for stronger legal protections and better support systems for survivors.⁸ Internationally, campaigns such as #MeToo and initiatives by UN Women have contributed to a broader conversation around consent, creating space for survivors of marital rape to speak out and challenging the perception of marriage as a blanket of permanent sexual consent.⁹

⁶ Menon, *Seeing Like a Feminist* (2012), p. 89

⁷ Agnes, *Law and Gender Inequality* (1999), p. 162

⁸ Chaudhury, *Courting Gender Justice* (2021), p. 133

⁹ Smart, *Feminism and the Power of Law* (1989), p. 91

Public education and survivor support remain central pillars of the global advocacy framework. Campaigns aimed at redefining consent stress that marriage does not negate the right to bodily autonomy and emphasize that sexual consent must be ongoing, informed, and mutual. By engaging cultural and religious leaders, these movements strive to shift societal attitudes and dismantle patriarchal norms that enable marital rape to be normalized or ignored.¹⁰ Alongside educational outreach, advocacy organizations also work to establish shelters, helplines, legal aid, and psychological services for survivors, offering critical support to those escaping abusive marital relationships. Access to counselling and mental health services is viewed as essential for survivors' recovery, and many advocacy networks fight for state-supported and affordable care. Collectively, these efforts mark a transformative step toward ensuring that marital rape is no longer treated as a private or secondary concern but rather as a serious violation of human rights deserving full legal and social accountability.¹¹

VI. STRENGTHENING LEGAL FRAMEWORKS TO ADDRESS MARITAL RAPE

Legal reform is indispensable in the pursuit of justice for victims of marital rape, requiring a multi-dimensional approach that encompasses the repeal of outdated laws, clearer definitions of the offence, and robust support systems. The first step is the full criminalization of marital rape by eliminating exceptions that treat marriage as blanket consent for sexual activity. For instance, Exception 2 to Section 375 of the Indian Penal Code, which excuses non-consensual sex between spouses if the wife is above a certain age, must be repealed to ensure equal legal protection.¹² Additionally, laws must define marital rape clearly to include not just physical violence but also coercion, psychological manipulation, and threats. Recognizing non-physical forms of compulsion is essential to address the full scope of harm that marital rape can inflict.¹³ Enhanced penalties must also be instituted, particularly when the offence is compounded by aggravating circumstances such as pregnancy, disability, or repeated abuse. These provisions must ensure that marital rape is treated with the same seriousness as any other form of sexual violence, removing distinctions based on marital status.

Moreover, comprehensive support systems for victims should accompany these legal reforms. Access to legal aid, protection orders, and counselling services must be guaranteed, enabling survivors to seek justice and recover from trauma without financial or institutional barriers.¹⁴ Statutory limitations on reporting should also be removed, recognizing that many survivors

¹⁰ Menon, *Seeing Like a Feminist* (2012), p. 115

¹¹ Baxi, *The Future of Human Rights* (2006), p. 243

¹² Agnes, *Law and Gender Inequality* (1999), p. 150

¹³ Smart, *Feminism and the Power of Law* (1989), p. 104

¹⁴ Chaudhury, *Courting Gender Justice* (2021), p. 189

delay disclosure due to fear, stigma, or dependency. Public awareness campaigns that focus on consent, respectful relationships, and gender equality play a vital role in shifting societal norms and challenging patriarchal ideologies that perpetuate marital rape. Engagement with religious and community leaders further helps dismantle harmful cultural perceptions of marriage and sexuality. Finally, establishing independent monitoring bodies ensures accountability within law enforcement and the judiciary, allowing for regular assessments and public reporting to promote transparency and justice).¹⁵ Collectively, these reforms represent an essential path forward in recognising and addressing marital rape as a severe violation of human rights.

VII. CONCLUSION

Addressing the issue of marital rape through legal reforms is an essential step toward ensuring justice, safety, and equality for all individuals, especially women, within marriage. The criminalization of marital rape, along with clear definitions, appropriate penalties, and robust support systems for survivors, is critical to ensuring that such acts of violence are not tolerated under any circumstances. Reforms must also include training for law enforcement, awareness campaigns, and community involvement to shift societal attitudes about consent and gender equality, ultimately fostering a culture that condemns violence within marriage.

While significant progress has been made globally, challenges remain, particularly in countries where marital rape is still not recognized as a crime. Full criminalization, along with comprehensive victim support and gender equality initiatives, is necessary to provide protection for victims and hold perpetrators accountable. Additionally, international standards and cross-border cooperation are essential in addressing this issue on a global scale.

The ultimate goal is to create a legal and societal framework that protects individuals' autonomy, respects consent in all relationships, and ensures that marital rape is seen for what it truly is—an egregious violation of human rights. Only through sustained advocacy, legal reforms, and cultural change can we ensure that marital rape no longer remains a silent and overlooked form of violence.

¹⁵ Baxi, *The Future of Human Rights* (2006), p. 231

VIII. REFERENCES

Case Laws:

- *People v. Liberta*, 64 N.Y.2d 152, 474 N.E.2d 567, 485 N.Y.S.2d 207 (N.Y. 1984).
- *R v R* [1992] 1 AC 599 (House of Lords).
- *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, 2018 SCC OnLine Guj 732.
- *Independent Thought v. Union of India*, AIR 2017 SC 4904; AIR 2018 SC (Criminal) 229.

Books:

- Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).
- Smart, Carol, *Feminism and the Power of Law* (Routledge, 1989).
- Baxi, Upendra, *The Future of Human Rights* (Oxford University Press, 2006).
- Menon, Nivedita, *Seeing Like a Feminist* (Zubaan, 2012).
- Chaudhury, Nandita, *Courting Gender Justice: Feminism and the Law in India* (Oxford University Press, 2021).
