

“Marital Rape in India; A Bane to the Institution of Marriage”

Prince Badal¹
Pursuing Law,
Amity University, Lucknow

Harshita Mishra²
Pursuing Law,
Amity University, Lucknow

ABSTARCT

Rape is a heinous act of sexual intercourse committed against any natural person forcefully without the consent of such person against whom it is committed. Traditionally defined as non-consensual sexual intercourse or acts committed by force or coercion, rape can occur in any context — including within the institution of marriage. Despite the increasing recognition of various penal laws in India, marital rapes have arisen in the last two to three decades. The absence of consent is an essential element and need not include physical violence. Marital rape is deemed to be a form of domestic violence and sexual abuse. The notion of all kinds of matrimonial exemption has no justification or applicability at the present time. This paper seeks to criminalize marital rape and it should be recognized by law that rape can be analyzed in any form. In this research paper, various observations given by Indian courts from time to time in different cases have also been properly mentioned. The paper also throws light on the social and legal perspective of marital rape. In this, the various causes of marital rape, its types, various serious consequences, and appropriate solutions to solve this serious problem have also been discussed in detail.

INTRODUCTION

Marriage in India is not merely a social contract; it is a sacred bond woven with threads of tradition, emotion, and spiritual connection. Rooted in centuries of culture and guided by timeless rituals, an Indian marriage is seen as the union of not just two individuals, but two families, two hearts, and two destinies. That's what we would say, at least on the basis of principles. We have to be honest when talking about the nature of this relationship, how some of us keep on bragging about the low divorce rate in our country and making comparisons between western countries and Indian marriages, right.

But what happens when this marriage results -where a man exploits his wife, to whom he is married. One minute but we do not see anything wrong in it. But even this is not the worst part of our country's weddings! The law which is and are prevailing in India still confirms the old view and does not accept that marital rape is no less destructive than rape but unfortunately, these laws do not provide protection to any victim if the offender is the spouse of the victim.

¹ Student at Amity University Lucknow campus

² Student at Amity University Lucknow Campus

The main problem with the concept of marital rape is our society has found it difficult to understand the concept of marital rape. "If people are married, how can it be rape?" but here the question arises that only harm that rape can cause is slander, which is why no 'respectable man' wants to marry a rape victim. So, if a woman is already married, why is she complaining?

However these sacred institution like marriage has become a type of legal right for men to display their animal behaviour over their wife.

Marital rape or spousal rape means indulging in sexual intercourse with one's spouse without consent. The absence of consent is an essential element and need not include physical violence. Marital rape is deemed to be a form of domestic violence and sexual abuse. Sexual violence in marital relationships is one of the most privatized and least addressed forms of violence. Most sexual violence in India occurs within marriages but it is estimated that only about 10% of victims report spousal sexual abuse, women who are victims of spousal sexual abuse often suffer from other types of IPV (sexual Intimate Partner Violence) as well; physical, emotional, and psychological, thus bearing a particularly potent burden of exposure and psychiatric risk. Rape within marriage or marital rape is a global problem and it seriously affects the mind and soul of the victims of marital rape and has devastating effects in life. Although many countries have outlawed marital rape or withdrawn the exemption to rape within marriage, the situation has hardly changed in India, which has not yet outlawed marital rape.

LEGAL STATUS OF MARITAL RAPE

Having sex with a woman without her will is considered rape. This is a legal offense for which there is a provision of punishment in the Indian Penal Code. But in India, if the husband forcibly has physical relations with his wife without the consent of his wife, then it is not considered a crime. That is, marital rape or marital rape in India is out of the purview of the crime of law, having sex with a woman without her will is considered rape. This is a legal offense for which there is a provision of punishment in the Indian Penal Code.

The central government is of the opinion that in many western countries marital rape is a crime. But from this it is not necessary that it should be followed blindly in India also. The Center also said that before declaring marital rape as a crime, all the problems like education, economic condition of women, and poverty in the country will also have to be thought of.

The Supreme Court in a judgment in 2017 had said, "Rape committed within a marital relationship will not be counted as an offence." then the central government had said that the government was in support of proviso (exception) 2 of section 375 of the IPC. Exception 2 of section 375 provides for the protection of the dignity of the husband, minor wife and their marital relationship.

Marital rape case means that if the husband goes against the will of his wife and makes a relationship, then it will be called rape. We are not saying this, but this decision has been given by the Kerala High Court. According to the court, treating the wife's body as one's property and having sex without her will is marital rape.

Whereas Kerala High Court, in an important decision, said that marital rape is a strong ground for claiming divorce.

Sec 375(2) of Indian Penal Code, 1860 and Section 63(2) of Bhartiya Nyaya Sanhita, 2024. Before this part was included, there were harsh cases about non-consensual sexual intercourse with one's spouse. However, these Sections also failed to open the doors of justice for those women who face these crimes in their home, just they are married and below the age of 18.

WHAT HAS BEEN ESTABLISHED IN THE HINDU MARRIAGE ACT?

Under the Hindu Marriage Act, there are certain responsibilities of husband and wife towards each other. Here are many such court decisions in which it has been said that refusing to have physical relationship is cruelty and on the basis of this, wife and wife can get divorced.

According to Section 375 of the Indian Penal Code (IPC), if a man has sex with a woman then, the woman will be deemed to have been raped. But a proviso (exception) 2 also exists in this law. If the wife is less than 15 years of age, then the husband having sex with her is not rape.

Domestic Violence Act-2005: The Protection of Women from Domestic Violence Act, 2005 was passed by the Parliament of India. Its aim is to save women from domestic violence inside the home. This Act came into force on 26 October 2006. Sexual abuse within the home is defined under this law. Under which many types of violence and abuse come under the scope of domestic violence.

TYPES OF MARITAL RAPE:-

Nimesh bhai Bharat bhai Desai Vs State of Gujarat, 2018 SCC Online Gujarat 732, The Court examined the question: Would a husband forcing his wife to have oral sex be rape punishable under Section 376 of the IPC? In this case, the Hon'ble Court discussed three types of marital rapes that are common in the society:-

- Forceful or Violent Marital Rape

This is the most visible form, where the spouse uses physical violence, threats, or intimidation to force sexual intercourse such as Beating or physically overpowering the victim, threatening with weapons.

- Coercive Marital Rape

Here the emotional pressure, manipulation, or threats (not necessarily physical) are used to obtain sex without true consent.

- Marital Rape During Intoxication or Sleep

This occurs when one spouse has sex with the other while they are: Asleep, unconscious, or drugged. Intoxicated and unable to give informed consent.

- Sadistic or Cruel Marital Rape

This involves sexual violence mixed with sadism, humiliation, or degrading acts intended to cause pain, fear, or shame. It may be part of domestic abuse and is psychologically devastating.

- Reproductive Coercion or Marital Rape for Pregnancy

This occurs when one partner forces sex to cause pregnancy against the partner's will, prevent use of contraception.

STATUS OF MARITAL RAPE IN INDIA

India is amongst the thirty- six countries that still have not criminalized marital rape. *Exception 2* to Section 375 of IPC states "non-consensual sexual intercourse by a man with his wife, if she is over 15 years, does not amount to rape". Thus, coercive and non-consensual intercourse by a husband with his wife (above 15 years of age) is outside the ambit of rape.

In India, almost 83% of married women aged between 15 and 49 have blamed their husband for sexual violence whereas 7% have called the bygone husband an offender, according to the report of 2015-16 released by National Family Health Survey. 4% of the women were forced by the husband to enter into sexual intercourse, 2.1% to perform sexual acts and 3% were threatened when the wife did not want to or wish to perform, as per the report, NFHS-4.

In the case of the *Harvinder Kaur vs. Harmander Singh*⁴, The Delhi High Court held that the Constitution of India could not intervene in household matters as it would destroy the institution of marriage. The court also stated, "in the privacy of the home and married life neither Article 21 nor Article 14 of the Indian Constitution have any role to play".

After the Nirbhaya rape case in 2012, the Justice Verma Committee had suggested criminalizing marital rape and said that marriage didn't mean an irrevocable consent to sexual activities. But the Government of India neglected the suggestion.⁷

In the case of the *State vs. Vikash*, 2014, Special fast track court in Delhi stated that "the petitioner and respondent (accused) being a legally married husband and wife, the petitioner being major, the sexual intercourse between the two, whether forcible, cannot be considered as rape and no conviction can be fixed upon the accused."

In 2015, the RIT Foundation filed a Public Interest Litigation in Delhi High Court summoning the immunization of marital rape in section 375 of the IPC on the grounds of violation of the fundamental rights i.e., Article 14, 15, 19, and 21 of the Indian Constitution.

In 2016, Maneka Gandhi, then minister for Women and Child Development stated that due to illiteracy and poverty in India the concept of marital rape could not be applied here even if it is accepted and understood globally.⁸

In the case of Independent Thought vs. Union of India, the Supreme Court had to take a closer look at the idea behind the marital rape exception in Indian law. This exception said that if a husband had sex with his wife — even if she was between 15 and 18 years old — it would not be considered rape. The Court found that this exception violated the constitutional rights of underage girls who are married.

The Court compared this exception with other laws, such as:

- Section 375 of the IPC, which defines rape
- The POCSO Act (2012), which protects all children under 18 from sexual abuse
- The Prohibition of Child Marriage Act (2006), which discourages child marriage
- As well as other laws like the Juvenile Justice Act, the Domestic Violence Act, and the Human Rights Act

All these laws clearly say that children (anyone under 18) should be protected from sexual abuse, whether they are married or not. Because of this, the Court said that the marital rape exception was not valid when it came to girls between 15 and 18 years old.

Final Ruling:

The Supreme Court reinterpreted the law and said:

"Sexual intercourse or sexual acts by a man with his wife, if the wife is under 18 years of age, is considered rape."

This means that even within marriage, a man can be punished for rape if his wife is under 18 years old.

CAUSES OF MARITAL RAPE IN INDIA

Marital rape is not widely discussed due to a lack of resources and awareness. In countries like India, issues like low literacy and limited women's empowerment make it harder to address. Traditional social norms have taught women for generations that they must obey their husbands and meet their sexual needs. Many women believe it is their duty as a wife, as taught by religion and culture, to not question this, which is why they often don't see marital rape as wrong.

Many well-known psychotherapists and sociologists believe that marital rape often stems from conflict and power struggles between spouses. When tensions rise, some husbands try to show dominance by forcing sex, aiming to humiliate their wives and assert control. This act deeply violates the woman's dignity and privacy, making it especially traumatic.

Marital rape is not just about sex — it often involves violence, humiliation, and emotional abuse. The man uses it to show he is more powerful and that the woman is under his control.

Experts also point out that sometimes a woman may not want sex for personal reasons. However, some men take this refusal as a challenge to their masculinity, as they often have stronger sexual desires. When denied, they may respond with anger or force, seeing it as a blow to their ego.

SOCIETAL ISSUES RELATED TO MARITAL RAPE

Many women don't see forced sex by their husband as rape, unlike when it's done by a stranger, so they often don't report it.

There are many wrong beliefs about women and sex, such as:

- Women enjoy forced sex
- When women say “no,” they actually mean “yes”
- A wife must always have sex with her husband

These ideas are spread by culture and media, including pornography, and make men believe they can ignore a woman's refusal. Victim blaming is also common. Women often blame themselves, thinking they gave the “wrong signals.” In India, women who don't want sex are often called “bad wives”, which adds guilt and pressure. Researchers say it's important to understand the different types of force or pressure used in marriage, which help explain how marital rape happens.

Interpersonal coercion happens when a husband uses non-violent threats to pressure his wife. For example, he may threaten to stop giving money, cheat, or treat the children badly. This kind of pressure is more common when a woman is dependent on her husband. But if there is no physical threat, the sex that follows is not legally considered rape.

Physical coercion — real or threatened — is the main part of rape. This includes:

- Saying he will kill or hurt her if she refuses sex
- Using past violence to scare her
- Using physical strength to hold her down or cause injury

Social coercion is built into our culture. It makes women feel they must have sex, even if they don't want to. While this is harmful and unfair, it's not counted as rape under the law.

Researchers say that marital rape should be defined as sex where there is use or threat of physical force without the woman's consent. However, they agree that other types of pressure also matter and help raise awareness about the issue.

WHY MARITAL RAPE SHOULD BE CRIMINALIZED IN INDIA ?

Violation of Article 14 of the Indian Constitution

Article 14 of the Indian Constitution says that everyone is equal before the law and must get equal protection under the law.

But the Indian Penal Code (IPC) treats married women unfairly. It does not recognize forced sex by a husband as rape, even though all people should have equal protection.

When the IPC was written in the 1860s, married women were seen as property of their husbands, not as independent legal persons. Because of this, they had very few rights — like the right to file a complaint on their own.

Exception 2 of Section 375 IPC says that a husband cannot be punished for raping his wife. This is based on an old belief that a wife has no separate identity from her husband.

However, laws have changed over time. Now, husbands and wives are seen as separate and equal individuals. The focus today is on protecting women's rights.

This shift can be seen in new laws like:

- The Protection of Women from Domestic Violence Act, 2005
- The Sexual Harassment of Women at Workplace Act, 2013

These laws show that modern India aims to protect women from violence and harassment, and treats them as equal under the law.

Exception 2 of Section 375 IPC goes against Article 14 of the Indian Constitution, which promises equality before the law. This exception discriminates against married women by denying them legal protection from rape, unlike unmarried women.

It creates two classes of women — married and unmarried — and gives immunity to husbands, even if they force sex on their wives. The same act is a crime if done to an unmarried woman, but not a crime if done to a wife.

This difference has no logical link to the purpose of the law, which is to protect women from rape. As stated by the Supreme Court in:

- Budhan Choudhary v. State of Bihar, and
- State of West Bengal v. Anwar Ali Sarkar, any law that treats people differently must have a reasonable reason. Here, there is none.

The goal of Section 375 IPC is to punish rape. But Exception 2 blocks that goal by protecting husbands from punishment.

In truth, rape harms women the same, whether they are married or not. In fact, married women may suffer more, as it's harder for them to escape abuse at home.

This legal exception encourages husbands to force sex, as they know they won't be punished.

Breach of Article 21 of the Indian Constitution-

Exception 2 to Section 375 IPC also breaks Article 21 of the Constitution, which says no one can be denied life or personal liberty except by law.

The Supreme Court has said that "life and liberty" under Article 21 means more than just being alive or free. It includes rights like:

- Privacy
- Health
- Dignity
- A safe environment
- Safe living conditions

Today, courts also say that everyone has the right to say no to sex and to avoid unwanted sexual activity. This is part of the right to live with dignity and freedom.

Conclusion and suggestions-

Experts believe that women should not stay silent when they face abuse, especially in marriage. They should be encouraged to speak up and seek help. It's important to understand that consent means giving permission freely, and a woman's "no" or silence should never be taken as "yes." Both men and women should be treated equally under the law, without any gender bias. Marital rape should be recognized as a crime under Indian law, and Section 375 of the IPC should be amended to ensure justice and prevent misuse. All personal and civil laws should also allow divorce in cases of marital rape, giving women the right to live a life free from violence. Emotional and moral support from family and friends can be a great source of strength for survivors. Additionally, shelters can provide a safe space and guidance for victims. Helplines should be available for immediate help, and legal aid must be offered at low or no cost to assist victims with legal processes. Support groups can help survivors connect with others who have faced similar abuse, offering comfort and shared strength. Communities must also take responsibility by supporting stronger laws against domestic and sexual violence, and by promoting education and awareness to change harmful attitudes and prevent such crimes in the future.

Marital rape is a grave violation of a woman's dignity, safety, and constitutional rights. Treating it as a non-crime simply because of marital status is unjust and discriminatory. The law must recognize that consent is essential in all relationships, including marriage. Exception 2 to Section 375 IPC denies married women equal protection under Articles 14 and 21 of the Constitution. It is time for the legislature to act, remove this outdated exception, and ensure that all women—married or not—are protected from sexual violence. Every woman deserves to live with respect, autonomy, and legal protection.

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