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# **MARITAL RAPE: A SLEEPING WORM IN SOCIETY**

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**"Marriage is not a license for brutality"**

## **ABSTRACT:**

In Indian society, marriage is seen as a sacred ritual that unites two people with God's blessing. However, it can also become a situation where forced sex occurs. Consent is essential for any relationship, and when it is absent, the marriage can become a nightmare. Marital rape is a hidden issue in our society and in many women's lives. In a culture that highly values traditional gender roles, many believe wives are the property of their husbands. This belief leads to the idea that marital rape should not be recognized as wrong. One in three marriages in India experiences marital rape daily. This problem is often unreported because many women do not know their rights, or they face family pressure which forces them to endure abuse and sexual coercion. According to Section 63 of the Bhartiya Nyaya Sanhita, women can seek remedies only under the Protection of Women from Domestic Violence Act (PWDVA), which does not guarantee complete justice. Women face post-marriage trauma in many countries. In some, women can seek justice, but in India, the justice system often fails them. The study suggests that criminal law should reflect constitutional principles and international human rights obligations to achieve gender justice in marriage. When a woman seeks justice or speaks out about the issue, family pressure often silences her, as it could damage their reputation in society.

## **1. INTRODUCTION:**

Rape and marital rape differ primarily in that rape entails non-consensual sexual activity that is coerced or threatened. Marital rape occurs when one spouse forces non-consensual sexual acts on the other within a marriage. Countries such as the United Kingdom, Canada, Norway, and Sweden have criminalized marital rape. Norway was the first to do so in 1971, followed by Sweden, which made it a punishable offense under its penal code. Canada criminalized marital rape in 1983. In contrast, countries like India, China, Pakistan, and Bangladesh have not made marital rape a crime. Section 63 of BNS (Bhartiya Nyaya Sanhita) replaces the former

IPC (Indian Penal Code) Section 75 with a more modern, victim-centred definition of rape.

The first petition to criminalize marital rape in India was filed in 2015 by the RIT Foundation. Additional petitions followed in 2017, including one from the All-India Democratic Women's Association. Prior to this, the Justice Varma Committee, established after the December 2012 rape case, recommended that marital rape be recognized as a criminal offense.

## **2. UNSETTLING PSYCHOLOGICAL AND PHYSICAL WELL-BEING:**

The National Family Health Survey reveals that one in three women suffers from marital rape in India. The unsettling truth is that 30% of married women face abuse every six hours, leading to deaths from burns or long-term torture in numerous cases. About 50% of these incidents remain unreported, as women often view this abuse as a duty.

In such situations, victims feel helpless, ashamed, guilty, and afraid. This trauma can lead to anxiety, PTSD, and depression, potentially resulting in self-harm. It also creates long-term emotional struggles, diminishing their sense of self-worth and security. Children in abusive households often endure similar trauma, which adversely affects their mental health and leads to emotional scars. Witnessing such abuse may increase the likelihood that those children will become abusers themselves, perpetuating generational trauma. Approximately 36% of women take their own lives due to emotional exhaustion from this abuse.

Victims of marital rape often feel isolated and helpless, misunderstanding their circumstances. They remain silent about the abuse, which fosters avoidance personality traits and hinders future relationships. The trauma can last for decades, leading to bodily complaints and disorders. It disrupts physical health, causing lower fertility, chronic pelvic pain, uterine issues, stress-induced ulcers, and irritable bowel syndrome (IBS), which are often hidden symptoms of marital rape.

## **3. SOCIETAL AND RELIGIOUS STIGMA**

When women attempt to speak out against marital rape, their families and society often suppress them. Marital relationships are frequently seen as a 'dharma' (duty), and refusal to comply is viewed as failing in one's spiritual obligation. A Hindu marriage is traditionally regarded as a lifelong bond, and sexual abuse is often dismissed as a temporary adjustment issue in the marriage. Additionally, the traditional interpretation of Sharia emphasizes the

concept of Tamkin, which signifies a wife's availability to her husband. Some argue that the mahr (dowry) given during marriage confers automatic sexual rights.

Victims who choose to share their experiences often fear social ostracism, blame, or losing support from family and the community. In some cases, if victims speak out, they risk losing custody of their children. Societal stigma fosters a culture of silence among victims, and this stigma can be weaponized through economic threats. Many women rely on their husbands financially or are excluded from family property.

A common misconception is that once a woman says "I do," she has irrevocably waived her right to refuse sex. Women who resist their husband's demands are frequently labelled as "modern," "difficult," or "home-wreckers." Community leaders often reinforce shame by sharing their own tales of endurance, implying that survivors are "weak" or "over-sensitive" to the realities of marriage. Cultural events and festivals often celebrate male dominance and female obedience, reinforcing the idea that sexual boundaries violate sacred traditions, such as 'Karvan Chauth,' a Hindu ritual where women fast for their husband's well-being.

#### **4. LEGAL FRAMEWORK:**

Section 63 of the Bhartiya Nyaya Sanhita (BNS) 2023 redefines rape, replacing Section 375 of the Indian Penal Code (IPC) with a clear definition focused on sexual acts committed without consent or against a woman's will. A man commits "rape" if he:

- Penetrates his penis into a woman's vagina, mouth, urethra, or anus, or makes her do so with him or another person.
- Inserts any object or body part, other than the penis, into a woman's vagina, urethra, or anus, or makes her do so with another person.
- Manipulates any part of a woman's body to cause penetration into her vagina, urethra, or anus, or makes her do so with him or another person.
- Applies his mouth to a woman's vagina, urethra, or anus, or makes her do so with him or another person.

Acts under one of seven conditions:

1. Against her will.
2. Without her consent.

3. With her consent, obtained by putting her or someone she cares about in fear of death or severe harm.
4. With her consent, knowing he is not her husband, and her consent is given because she believes he is a different man to whom she is or believes herself to be married.
5. With her consent, when due to unsoundness of mind, intoxication, or drugging, she cannot understand the nature and consequences of her consent.
6. With or without her consent, when she is under 18 years old.
7. When she is unable to communicate her consent.

Importantly, a woman who does not physically resist penetration is not automatically seen as consenting to the sexual act.

EXCEPTION 1: A medical procedure or intervention does not count as rape.

EXCEPTION 2: Sexual intercourse or acts by a man with his wife, who is not under 18 years old, is not rape.

A significant legal issue is whether exception 2 violates constitutional rights, particularly:

- ❖ Article 14: right to equality.
- ❖ Article 15: prohibition of discrimination.
- ❖ Article 21: right to life and personal liberty.

Critics argue that the exception discriminates against married women, denying them the same protection enjoyed by unmarried women. Supporters of the exception uphold the institution of marriage and its legal implications.

In 2005, the Protection of Women from Domestic Violence Act (PWDVA) recognized marital rape as a form of domestic violence. This act enables women to seek legal remedies for marital rape and offers an avenue for legal separation from abusive partners.

The Justice Verma Committee was a three-member group formed in 2012 to reform criminal laws concerning sexual violence after the Delhi gang rape case. Led by former Chief Justice Verma, the committee submitted its report in 2013, recommending strict penalties for sexual assault, quicker trials, and amendments to address marital rape and police inaction. One of the committee's most significant recommendations, which remains a point of debate in India, was to abolish the marital exception. Specific recommendations on marital rape included:

Removal of exception 2: It recommended eliminating exception 2 from Section 375 of IPC (now referred to as Bhartiya Nyaya Sanhita), which protects husbands from prosecution for raping their adult wives.

Gender-neutral language regarding the perpetrator: While focusing on women's safety, the committee called for a framework that considers the lack of consent rather than marital status.

Sentencing: It suggested that the relationship between the victim and the accused should be considered an aggravating factor rather than a mitigating one, as it involves a breach of trust.

Despite the committee's 360-page report, the government of India did not include the removal of the marital rape exception in the Criminal Law (Amendment) Act, 2013. Currently, the committee's findings are often referenced in ongoing litigation before the Supreme Court of India. Petitioners argue that the government's refusal to adopt the Verma committee's views on this issue violates the fundamental rights of married women when compared to unmarried women.

International bodies, including the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), have repeatedly urged India to criminalize marital rape, arguing that failing to recognize it goes against international human rights obligations.

## **5. CHALLENGES FACING THE CRIMINALIZATION OF MARITAL RAPE IN INDIA:**

- 1. Cultural sentiments:** Resistance to criminalizing marital rape in India is largely based on religious beliefs, which view marriage as a sacred institution where consent is presumed and forceful sexual intercourse within marriage is unacceptable.
- 2. Social, economic, and cultural readiness:** It is often suggested that India, being a developing country, is not ready for significant legal changes. However, this argument is less convincing when historical examples, such as the abolition of Sati (1829) and the Widow Remarriage Act (1856), show that India has successfully made progressive changes even when society was not fully prepared.

3. **Marriage as an idealized tradition:** Some believe that criminalizing marital rape could tarnish the purity of marriage, viewed as a sacred bond, and disrupt societal norms and values.
4. **Legal precedents:** Comparing India to Nepal, which shares similar cultural and religious roots yet has successfully criminalized marital rape, shows that legal reform is both practical and achievable. This indicates that traditional values do not have to hinder progress. India's judiciary and parliament should take similar steps to recognize marital rape as a crime.
5. **Misuse of laws:** There are concerns that criminalizing marital rape may lead to misuse by women for malicious purposes, potentially harming the institution of marriage. However, this concern does not justify the continuation of a wrongful practice. Laws, even if misused at times, serve a greater societal purpose. Safeguards can be implemented to prevent misuse.
6. **Misuse of legal provisions:** Concerns about potential misuse of a law should not prevent its creation, especially for issues as critical as marital rape. Like the Dowry Prohibition Act, the focus should be on stopping the actual crime rather than blocking reform out of fear. To address fears of false accusations, legal safeguards can be included to penalize those who file false complaints, as supported by the judiciary. Ultimately, the priority should be protecting victims and upholding justice.

## **6. CASE LAWS:**

### **Nimesh Bhai Bharat Bhai Desai vs. State of Gujarat (2018)**

In this case, the Gujarat High Court held that marital rape is not a crime under Indian law. The court noted that the exception for marital rape is based on an outdated view of marriage, where wives were seen as property of their husbands. The court argued that marital rape should be a crime. The law must protect the bodily integrity of all women, regardless of marital status. The court also indicated that the law on domestic violence already includes provisions for physical and sexual abuse.

### **Dilip Pandey vs. State of Chhattisgarh (2021)**

The Chhattisgarh High Court ruled on a case involving marital rape. The court referred to Exception 2 of Section 375 of IPC (now known as Bhartiya Nyaya Sanhita). The court noted that since the complainant was legally married to the applicant, any sexual intercourse between

them could not be deemed rape, even if it was forced or unwilling. However, charges under Section 377 of the IPC (unnatural offenses) were upheld based on the complainant's report that her husband had engaged in unnatural bodily acts with her. The court concluded that the charges justified by the complainant's allegations fell under Section 377, where the offender's intent was to achieve unnatural sexual gratification.

### **Manish Sahu vs. The State of Madhya Pradesh (2024)**

In this case, Sahu's wife filed an FIR against him for offenses under Section 377 (unnatural offenses) and 506 (criminal intimidation) of the IPC. The FIR stated that Manish Sahu had engaged in unnatural sex with her multiple times and threatened her with divorce if she revealed this information. The Madhya Pradesh High Court determined that even if the wife's allegations were accepted at face value, no offense under Section 377 of the IPC would be established. The court maintained that if a wife is living with her husband in a valid marriage, any sexual intercourse is not considered rape if the wife is above fifteen years old. In this scenario, the wife's lack of consent for an unnatural act becomes irrelevant. The court also referred to the Supreme Court's decision in the Navtej Singh Johar case, which legalized consensual homosexual sex between consenting adults of the same gender. The High Court stated that consent from both parties is necessary to remove the act from the scope of Section 377 of the IPC, but mentioned that such consideration becomes irrelevant in the case of a husband and wife living together, due to the exception under Section 375 of the IPC.

### **X vs. State of Uttarakhand & Anr. (2024)**

This case was decided by the Uttarakhand High Court. The main issue was habitual unnatural sex and harassment by the husband. After analysing the arguments, evidence, and legal provisions, the High Court ruled that the anal sex between the petitioner and his partner fell under Exception 2 of Section 375 of the IPC. Thus, the husband was not held liable under Section 375 of the IPC. Consequently, Section 377 IPC could not be applied against him.

### **Gorakhnath Sharma vs. State of Chhattisgarh (2025)**

The Chhattisgarh High Court acquitted a husband of charges of rape (Section 376 IPC) and unnatural sex (Section 377 IPC) following his wife's death from forced anal intercourse. The court cited the marital rape exception (Exception 2) to Section 375 IPC, deciding that non-consensual sex by a husband on his wife is not classified as rape. The accused had caused severe injuries to his wife, leading to her death in December 2017. A trial court had convicted

the husband under Section 376 (rape), 377 (unnatural sex), and 304 (culpable homicide not amounting to murder). The judge acquitted the husband, maintaining that sexual acts within marriage do not constitute offenses under Section 376 or 377. The court relied on the established legal exception that exempts husbands from rape charges, extending this immunity to unnatural sexual acts under Section 377 performed by a husband. This judgment faced heavy criticism for ignoring the victim's dying declaration and failing to recognize non-consensual acts as criminal violence, sparking debate on the continued existence of the marital rape exception.

## **7. CONCLUSION**

The issue of marital rape in India reveals a deep conflict between constitutional values and social conservatism. Indian law has slowly shifted toward a more victim-focused view of sexual violence. However, the marital rape exception still denies married women the same bodily autonomy and dignity that the law provides to all other women. By treating marriage as automatic consent to sex, this exception reduces the wife's identity from an equal partner to someone whose consent is assumed, ignored, or legally unimportant. This stance contradicts the constitutional guarantees of equality, non-discrimination, and the right to life and personal liberty. The legal framework in India, particularly section 63 of the Bhartiya Nyaya Sanhita, offers a more updated definition of rape. Yet, the ongoing presence of exception 2 undermines that progress. This exception creates an unfair distinction between married and unmarried women, even though both deserve protection from sexual violence. The Justice Verma committee rightly recognized that marriage cannot be a valid excuse for rape and recommended removing the marital rape exception. However, the lack of action on this recommendation reveals how legal reform is often postponed due to fear of social backlash rather than being driven by constitutional principles. The social arguments against making marital rape a crime are also weak. Claims that criminalizing it will harm marriage, lead to misuse of laws, or disrupt family harmony do not justify denying justice to victims. No institution can be safeguarded by allowing violence within it. Marriage should rest on mutual respect, consent, and dignity, not coercion or entitlement. If a marriage only endures through silence and force, it cannot be seen as a healthy or sacred institution. Additionally, concerns about false accusations can be managed with appropriate legal protections without denying support to real survivors. The psychological, physical, and social impacts of marital rape are severe and long-lasting. Victims often experience trauma, shame, fear, depression, and social isolation, while the silence

surrounding the crime worsens their suffering. Children raised in such environments are also affected, turning marital rape into a broader social issue rather than a private matter. Acknowledging and criminalizing it would be a crucial step toward safeguarding women's health, dignity, and freedom. The judgments from various high courts indicate that the legal system remains divided and inconsistent on this matter. Some courts recognize the outdated nature of the marital rape exception, while others strictly enforce it. This inconsistency highlights the urgent need for clear legislative reform. India can no longer depend on old beliefs about marriage and consent. A modern democracy must ensure that marriage does not protect sexual violence. Ultimately, criminalizing marital rape is not an attack on marriage; it supports equality, consent, and human dignity. A woman does not lose her right to say no after marriage. True reform will only come when the law acknowledges that consent is essential in every sexual relationship, including marriage.

## **8. FUTURE SCOPE**

The fact that marital rape is still not recognized as a crime in India is a serious issue. As someone who studies law, I see this as a violation of basic rights for individuals, especially women. The Indian Constitution guarantees personal freedom and autonomy, but this exception in rape law undermines those rights. It comes from colonial times when women were viewed as inferior to men, and that's unfair. The Supreme Court has made some progress in acknowledging women's rights, particularly when minors are involved. However, for married women over 18, the law still treats them as if they are not equal citizens. This contradicts the principle of equality in the Constitution. While some civil laws do protect women from domestic violence, they are insufficient. These laws do not carry the same influence as criminal laws and do not provide the same level of justice for women who suffer from marital rape. The government claims that making marital rape a crime would be too harsh on marriages, but this argument is weak. Data shows that many women experience violence from their husbands, which is a serious issue that needs addressing. Many countries around the world have already criminalized marital rape, and it's time for India to follow suit. The pending petitions in the Supreme Court offer a chance to align Indian law with the principles of justice and dignity stated in the Constitution. Criminalizing marital rape is essential not only from a legal standpoint but also as a moral obligation. It is about recognizing women's basic human rights and ensuring they are treated with dignity and respect. India must progress and create more just and fair laws for all citizens, regardless of gender or marital status. The time has come for India

to join the countries that have eliminated the marital rape exception and acknowledged women's rights to bodily autonomy and personal liberty.

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