



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL TEAM**

### **Raju Narayana Swamy (IAS ) Indian Administrative Service officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of Law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

## **Dr. Rinu Saraswat**



Associate Professor at School of Law, Apex University, Jaipur,  
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

## **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



## **Subhrajit Chanda**



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# A REVIEW ON MARITAL RAPE IN INDIA

**AUTHORED BY - MANTASHA KHAN, SOHAIR SHAIKH**

**& ANSARI SOBIYA PARVEEN**

**CLASS: 3RD YEAR BLS, LLB**

**INSTITUTION: SHREE. L. R. TIWARI COLLEGE OF LAW**

## **Abstract**

One of the worst crimes that occurs in India is marital rape. It is now recognized as a distinct kind of rape and not only an offense. Marital rape typically affects married women. It is among the greatest threats to India's overall judicial system. This particular social ailment has persisted in India since the time of the Asian people and continues to affect the country's racial population. In Indian society, marital rape has never been viewed as a problem. For a variety of reasons, anyone in Indian society can actually see it. In this sense, the Indian legislature's stance is the same. The Indian constitution has bestowed upon the legislature the highest honor in enacting laws for the protection, security, and growth of the nation. However, the legislature has no desire to see the level of a small ray removed from the nation. The Indian judiciary holds out promise in this area, but it is limited because the legislature, not the court, is the one that drafts laws on a regular basis. India lacks effective laws, thus fathers must introduce some powerful.

**Keywords:** Marital Rape, India, Indian Society, Indian Legislature, Indian Executive Indian Judiciary, Violence, Physical Intercourse, Consent, Marriage, Indian Judiciary, fundamental rights.

## **Introduction**

In the past, our society has found it challenging to comprehend the idea of marital rape. "If people are married, how can it be rape?" Even more disheartening are the underlying presumptions. Because it is thought that the only real harm that can result from rape is slenderness, no respectable man would ever want to marry a victim of rape. Is already married, then? The fact that even a fearful institution like marriage has evolved into a legal platform for men to act animal instincts—for example, by trying to treat their wives with dignity and self-respect—is another extremely unsettling development.

Form the foundation of the frightened partnership. You are the one who has the personal right to consent to sexual activity; it cannot be raised in any way. Marital rape exist in India a shameful crying that has hurt trust and confidence in the institution of marriage. A large population of women has suffered the brunt of the de criminalisation of this practice. Rape expose the failure of those institution of society which was established to provide better security and self-esteem to an individual in a society. This institution sometime not only fail to protect an individual from such serious attack on the autonomy and price legalising them by law or by not making them illegitimate mate. State have offend either legalize rape with marriage or refrained from declaring it a crime has it is a private sector that it is not open to legal interference.

In India, marital rape is a scandalous practice that has damaged people's faith in the institution of marriage. A significant number of women have been negatively impacted by the practice's decriminalization. Rape exposes the shortcomings of the social institutions designed to give people in a community greater security and self-worth. Sometimes, this institution does not only fail to defend a person against grave attacks on their autonomy and legal status—by failing to grant them Illegitimate status. Since rape occurs in the private sphere and cannot be influenced by the government, the state has either legalized it or refrained from making it a crime.

## **WHAT IS MARITAL RAPE?**

Marital rape is merely having a relationship against the wife's will, but it is not considered a crime. As per a report by the United Nations, almost 75% of married rape incidents take place in India annually. According to the court, such behaviour will amount to cruelty, both mental and physical, but it cannot be punished. This instance demonstrates human excess. However, some individuals think a wife could use it as a convenient weapon to harass her spouse. The question that then comes up is: What makes rape different from marital rape, and how is the institution of marriage related to it?

## **WHAT IS RAPE?**

Rape, as defined by the Oxford Dictionary, is the sobbing that usually occurs when a man forces a woman to have sex with him against their will. The Cambridge Dictionary defines coercing someone into having sex as employing violence or intimidating behaviour.<sup>1</sup>

---

<sup>1</sup> Oxford Dictionary and Cambridge Dictionary



## **WHAT IS SAID IN HINDU MARRIAGE ACT?**

The Hindu Marriage Act imposes obligations on husband and wife regarding one another. This includes the husband's right to engage in physical intimacy. Numerous court decisions have stated that it is cruel to refuse to engage in physical relationships; therefore, one can understand why and how to file for divorce.

According to section 375 of the Indian penal code if a man has sex with a woman under the circumstance the woman will be deemed to have been raped. Sexual intercourse made against the will of the woman. Billing of the woman but this consent has been obtained by showing fear of killing or hurting her or doing so to any person close to her. With the consent of the woman, but the woman has given the consent under the illusion of being married to that person.

A woman will be considered to have been raped if a male engages in sexual relations with her in violation of section 375 of the Indian penal code. Sexual activity that is done against the woman's will. Consent of the woman, but this permission was won by demonstrating a dread of murdering, hurting, or harming her, or harming anyone who is close to her. With the woman's approval, but the woman has provided the consent under the illusion of being married to that individual.

With the woman's consent, but at the time of consenting, the woman was not in a sober state of mind or was under the influence of alcohol, and the girl was too young to comprehend the implications of her consent. Perform on a lady under the age of sixteen without her permission or well-being.

## **WHAT IS THE DIFFERENCE IN LAW?**

The IPC contains a definite definition of rape. However, it makes no mention of rape in marriage. Section 376 stipulates penalties for rape, period. Specifically, if the victim is a woman under the age of twelve, the husband who rapes her may face consequences. The law stipulates that a husband who commits rape on a wife who is younger than 12 years old faces either a fine, imprisonment, or both for a maximum of two years. The provisions of sections 375 and 376 make it very evident that a woman must be 16 years old to consent to having sex, while a white person who is around 12 years old has no bearing on the matter.

The exception to section 375 and exception 2, which indicate that if a man has sexual relations with his wife and the woman is not less than 15 years old, such relations shall not be classified as rape, are being challenged by an independent nongovernmental organization in a court application and file in 2023. Independent thought has given way to the law, which provides protection against rape under section 375b to all minors, regardless of their marital status.

### **Domestic Violence Act-2005**

The protection of women from domestic violence at, 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. This also includes sexual abuse such as rape and coerced physical relations. What does the Hindu marriage act say? The domestic violence act was introduced in 2005 to protect women from sexual abuse inside the home. This law protects the women from the sexual abuse at home.

The Indian parliament passed legislation in 2005 protecting women from domestic abuse. Its mission is to protect women from domestic abuse at home. This becomes operative on October 26, 2006. Under this legal framework, which encompasses a wide range of abuse and violence, sexual abuse within the home is defined. This includes coerced physical relations as well as sexual assault like rape. What is stated in the Hindu Marriage Act? In order to safeguard women against sexual abuse within the house, the Domestic Violence Act was introduced in 2005. Women are shielded from domestic sexual abuse by this law. The Hindu Marriage Act lays out the obligations that a husband and wife have to one another. It includes the freedom to form romantic bonds. Legal health that declined to engage in physical intimacy is a trait that might be pursued in this regard.

## **TYPES OF MARITAL RAPE**

- **Nimeshbhai Bharatbhai Desai Vs State of Gujarat, 2018 SCC Online Gujarat 732<sup>2</sup>** The court considers whether a husband pressuring his spouse to engage in oral sex constitutes rape in accordance with section 376 of the IPC. The honorable code in this instance discusses three

---

<sup>2</sup> <https://primelegal.in/2022/06/03/split-verdict-on-the-challenge-to-marital-rape-supreme-court-to-settle-the-issue-delhi-high-court/>

forms of marital rape that are prevalent in the community.

- 1) **Battering Rape:** This is a particular kind of marital rape in which the victim is subjected to numerous forms of physical and sexual abuse. Sometimes the woman is abused during a sexual encounter; in these cases, the rape may occur after a physically abusive incident in which the husband wants to make amends and coerces the wife into having sex against her will. For under the state categories, most of the time.
- 2) **Force only Rape:** The husband uses as much force as necessary to coerce the wife in this kind of marital rape. In this instance, sexual assault may not be a characteristic, but women who deny me the opportunity to engage in sexual activity typically subject me to such attacks.
- 3) **Obsessive Rape:** In cases of obsessive rape, the perpetrators usually use extreme torture and/or preserve section acts. This kind is also classified as sexual assault.

- **Farhan v. State & Anr(Writ Petition(Criminal) no: 964/2017).**

Brief facts of the case are as follows: Farhan v State is one of several petitions challenging the marital Rape Exception (MRE) inserted to Section 375 of the IPC. A Mr. Farhan has filed a special case to quash an F.I.R. filed against him, charging him with offenses under Sections 3 and 4 of the POCSO Act. Mr. Farhan had sexual relations with the respondent Ms. Alina when she was around 15 years old. According to Muslim Personal Law (Shariat) and Application Act of 1937, the provisions of the POCSO Act have no bearing on MRE. The question posed is whether the POCSO Act applies if the victim is the perpetrator's wife, The opponents of striking down the provisions raise the issue of judicial authority in challenging a law established by the legislature, potentially violating the principle of separation of powers. They further refute the claim that there is no legal framework to penalize marital rape, pointing to Sections 376B and 498A of the IPC, Section 198B of the Cr PC, and the provisions of the Domestic Violence Act. He proposes these rules, among other things, to provide a legislative framework in which a spouse who engages in nonconsensual sex with his wife could face criminal charges.

**JUDGMENT:** After examining both sides' submissions, the court reached a split decision in the two-judge bench, with Justice Shikder supporting the repeal of the provision and Justice Shanka opposing it. Justice Shikder ruled that the challenged provisions, i.e. Exception 2 to Sections 375 and 376B of the IPC, as well as Section 198B of the Code, insofar as they concern a husband/

separated husband having sexual communion/intercourse with his wife (who is not under the age of 18), albeit without her consent, are in violation of Articles 14, 15, 19(1)(a), and 21 of the Constitution and thus invalid. He further explained why the offending husbands do not fit inside the scope of the phrase "relative" specified in Section 376 (2)(f).

## **CAUSES OF MARITAL RAPE IN INDIA**

<sup>3</sup>Due to a lack of resources, marital rape decisions have not been made thus far. The issues of women's empowerment and the low literacy rate require attention, particularly in a nation like India. Women's unwillingness to acknowledge marital rape as rape has also been greatly influenced by the persistence of social conventions that have ruled women's lives for millennia. Women often believe that it is their duty to obey their husbands' orders and to fully experience their sexual desires in order to be the perfect wife. According to religious test, it is appropriate to have sex with the husband's wife in order to uphold the hierarchy of the family.

Reputable sociologists and psychotherapists have stated that one of the reasons behind marital rape is that when the couple's differences become more apparent, the husband attempts to assert his dominance over the woman. to show his wife humility. Demonstrate his power over her and ruin her privacy. Marital rape is especially humiliating for the women because it involves a complex process of community and stripping the victim, which humiliates the wife, whom he supposed to be the most terrified of all. Therefore, the act of rape is heinous itself insulting the victim. Men use this to assert their dominance over women and their belief that they will always be at his mercy. According to a psychotherapist, women occasionally refuse to have sex with their husbands for reasons that are obvious only to them. In general, men tend to be more oversexed than women. Thus, the male views being refused sex as a slight to his manhood.

## **SOCIAL ISSUES RELATED TO MARITAL RAPE**

The phrase "marital rape" is contentious and sometimes used interchangeably with "rape," which is generally regarded as a sexual offense and marriage as a socially acceptable sex. In general, women do not think that sexual assault by their husbands is as common or as likely to be reported. Many sector

---

<sup>3</sup> <https://timesofindia.indiatimes.com/readersblog/thoughts-on-marital-rape/marital-rape-a-heinous-crime-56562/>

types exist about women and sex, for example, women who enjoyed four sexes.<sup>4</sup> Ladies mean "yes" when they say "no" to sex, a common belief. In Indian society, a wife is expected to have sex with her husband; nevertheless, the mainstream and audio-visual media encourage this behaviour through many means. And it leads them to feel that a woman's complaint should always be disregarded. One game that is popular in Indian society is victim blaming. However, miss also gives women the impression that they are at blame for unwanted sexual encounters by sending the wrong signal. The notion of a "bad wife" is widely accepted in Indian society. It is assumed that women who do not enjoy sexual interactions are "bad wives," and it is helpful to distinguish between various forms of infidelity and husband-wife relationships, as well as the facilitation of marital rape. Interpersonal coercion happens when a woman confronts her husband in non-violent ways. A spouse who threatens to withhold money, initiate a romantic relationship, or behave inappropriately around children is engaging in interpersonal coercion. Such a threat's coercive quality is most noticeable in marriage, as a woman's dependence and helplessness weaken her negotiating position. However, since these threats are unrelated to any physical force, the subsequent intercourse cannot be justified as rape. Rape, on the other hand, is fundamentally based on physical coercion, either real or threatened. A lady may be physically threatened with anything from a plate to murder her if she disobeys the implied threat that she will suffer harm if she disobeys. The implied threat are specially potent in relationship where a husband has betrayed his partner in the past.

The actual use of physical force has a wide range from holding a woman down with the greater size and strength to inflicting extensive injuries. Social regarding marital sex is institute analysed in our culture and internalized in individual. While such coercion can be degrading and detrimental especially when a combined by other form of male in titlement and control it does not fall within a useful definition of rape. Reserve further suggest limiting the definition of marital rape to the use of threaten used a physical force without the consent of the women through they considered other to form of coercion important in political rising Particularly strong are the inferred themes in relationships in which a husband has previously betrayed his partner. The actual application of physical force might vary greatly, from severely hurting a woman to just holding down a larger, stronger woman. Marital sex is a social construct that is examined in our culture and assimilated by the individual. Although this kind of compulsion can be harmful and demeaning, particularly when paired with other forms of male

---

<sup>4</sup> <https://www.legalserviceindia.com/legal/article-9414-marital-rape-a-harsh-reality-behind-closed-doors.html>

authority and status, it does not fit the definition of rape that is now in use. Reserve goes on to recommend restricting the definition of marital rape to the use of physical compulsion, such as threats, without the women's permission, as they view this as a significant kind of political pressure.

## **SUGGESTIONS AND CONCLUSION**

The brilliant philosopher Wolfgang Schaefer and the expert suggested the following strategy to help stop these horrific crimes: mutual harassment happens when both parties are on board. Women should support their word and insist on remaining silent because of social pressure. Men alone cannot be forced to adopt this behaviour. Someone who condones violence in silence is equally reprehensible. Women should therefore speak out against it. It is important to define consent in order to set it apart from compulsion. Due to the fact that it has been seen that women say "no" to sex when they are silent, but "yes" when they do. Gender neutral laws must be created in order to eradicate inequality.

The Indian Penal Act, 1860 should make marital rape a crime, and section 370-5 of that law should be amended to contain restrictions to stop its exploitation. Marital rape ought to be regarded as one of the primary grounds for divorce under the personal laws. A woman who has been the victim of marital rape may find a lot of consolation and support from her friends and relatives. For the victim ladies, shelter might offer a short-term secure place to dwell. The workers at the shelter can also assist by highlighting options for consideration. Legal 8 service could offer the victim low-cost, free legal advice or support. Support groups can be beneficial because they give victims of partner abuse a forum to discuss their experiences. The community has expressed support for strict enforcement of current laws and new legislation aimed at reviving domestic and sexual abuse. It also fully supports local, state, and federal programs for education and prevention.

One of the most horrible crimes against women worldwide is rape. It unsettles not just the victims but also the community at large. In the last ten years, India has witnessed an unparalleled rise in the number of rape crimes, raising concerns about the necessity of tougher laws now more than ever. Although we have made great progress in addressing this societal evil and uniting to combat it, there is still more work ahead of us. Although there have been numerous amendments to bring about important reforms in the nation. Sadly, no amendment has made it clear that marital rape is a crime, which is another issue that the law continues to ignore. Therefore, BC's stick laws are crucial to protecting guard women from family members and outsiders. The fact that section 375 defines rape

as a crime that is gender-specific and does not apply to women presents another important gap in the law. For this reason, a woman will not be found guilty under section 376 even whether she commits the crime of raping a man or a woman. Due to the lakhuna, which states that only men under the age of 16 are protected by the 2012 rule protecting children from sexual offenses, this issue has to be addressed. Adult males are not protected by the law, and even in the moment when women rape men, there is no legal protection for the victims of these crimes.

