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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

# **MARITAL RAPE IN INDIA: LEGAL GAPS, CULTURAL PERCEPTIONS, AND PUBLIC ATTITUDES**

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## **1. Abstract:**

The issue of marital rape in India has become a subject of growing concern over the last few decades. Although there has been growing recognition of penal legislation, marital rape is still mostly untouched by targeted legislation, posing serious legal and social issues. The criminalization of marital rape is advocated for in this paper, with the belief that compelled sex without consent, whether by wife or husband, amounts to rape. The old idea of matrimonial exemption to sexual consent invades individual rights and welfare in marriage. The paper examines the legal, social, and psychological consequences of marital rape, clarifying that it impacts men and women, although it is mostly regarded as a violation against women. It refutes the gendered explanation of marital rape, considering that male and female victims endure serious emotional and psychological damage. With an examination of legal precedents, Indian case law, and comparative studies, the paper recommends that a gender-neutral solution be implemented for marital rape. The paper also addresses the reasons, nature, and aftermaths of marital rape, in addition to prominent findings of Indian courts. It finally demands the passage of a special law criminalizing marital rape, bringing India's law in conformity with the rest of the world and affording equal protection to all the victims.

## **2. Introduction:**

As much as we boast of the institution of marriage, particularly compared to the comparative divorce rates in Western nations, there is an uncomfortable reality that tends to go unspoken. The truth is that, in the very institution we cherish so much, a woman can be exploited by her legally wedded husband, and society might not regard this as a serious matter. This is not just a question of social attitude but also of legal indifference. Section 375 of the Indian Penal Code describes in detail under what circumstances a person can be prosecuted for rape, but

unfortunately, this does not cover cases where the perpetrator is the spouse. While marital rape has been mostly viewed as a crime against women, this paper contends that it is essential to note that men can also be victims. The psychological and legal effects of marital rape cut across both sexes, and the law needs to change to accommodate this fact.

Nimeshbhai Bharatbhai Desai Vs State of Gujarat, 2018 SCC Online Gujarat 732, The Court considered the following question: Would a husband compelling his wife to oral sex constitute rape under Section 376 of the IPC? In this case, the Hon'ble Court deliberated on three forms of marital rapes prevalent in the society:-

- i. **Battering Rape:** This is a form of marital rape in which women undergo both physical and sexual abuse in the relationship in various ways. Some of the situations are those in which the wife is battered during the sexual brutality, or the rape can follow a physically brutal encounter where the husband wishes to make up and pressurizes his wife to have sex against her will. In most instances, the victims belong to this mentioned category.
- ii. **Force only Rape:** In this type of marital rape, husbands use only that amount of force, as it is required to pressurize their wives. In such cases, battering may not be an attribute, but women who deny sexual intercourse usually have to face such assaults.
- iii. **Obsessive Rape:** Assaults in obsessive rape are vicious torture and/or perverse sexual assault and are typically fierce in nature. This category has also been described as sadistic rape. There was a felt need for a new sexual assault law.

In Sakshi v. Union of India, the Supreme Court had realized the shortcomings in as far as the law concerning rape was concerned and had recommended that the legislature consider making some changes to the law. Following the criminal law amendment bill, 2013 rape was defined as the most heinous incidents where the parliament through an amendment attempted to broaden the scope of rape and the perception by declaring oral and anal acts as amounting to rape.

### **3. History:**

The idea of marital rape was not legally established until the late 20th century in most countries. In the past, marriage was considered implied agreement to sex, and a man's right over his wife included sex. The laws in countries like the U.S., the U.K., and India did not prosecute marital rape until the end of the 20th century. For instance, England and Wales repealed the marital rape exemption in 1993. While the legal acknowledgment of marital rape



has progressed, attitudes in society continue to be stuck in their conventional, gendered perceptions of marriage, reducing and overlooking male victims' experiences as well. In India, society finds the notion of marital rape hard to accept—people often ask, "If couples are married, then how is it rape? The deeply entrenched assumptions are more disturbing: rape is seen to damage a woman's reputation, and if she is married anyway, why complain about forced sex? These perceptions trivialize the problem, solidifying the assumption that a wife has a right to her husband's body, irrespective of her consent".

Sexual assault within a marriage is also a crime within India, and it hugely shakes the trust and faith within the institution of matrimony.

Rape, irrespective of context, establishes the failure of social institutions that are tasked with safeguarding individual rights and dignity. Regrettably, these institutions at times fail not only to safeguard individuals against violations of their autonomy but also tacitly sanction such violations by negating that they are criminal. Marital rape is usually dealt with as a private issue, outside the realm of legal interference. Although marital rape has been banned or the marital exemption abolished in most nations, the position in India continues to be different, with marital rape not being a recognized crime yet.

#### **4. Legal Frameworks, Gaps and Role of Indian jurisprudence:**

"375. A man is held to commit "rape" if he—

penetrates his penis, to any degree, into the vagina, mouth, urethra or anus of a woman or causes her to do so with him or some other person; or inserts, to any degree, any object or part of the body, not being the penis, into the vagina, the urethra or anus of a woman or causes her to do so with him or any other person; or puts his mouth on the vagina, anus, urethra of a woman or causes her to do so with him or any other person, under the circumstances falling within any of the following seven descriptions:

- First.—Against her will.
- Secondly.—Without her consent.
- Thirdly.—With her consent, when her consent has been obtained by putting her or any other person in whom she is interested, from fear of death, or of hurt.
- Fourthly.—With consent, when the man is aware that he is not her husband and that she consents because she supposes him to be another man to whom she is or supposes

herself to be lawfully married.

- Fifthly.—With consent when, at the time of the giving of such consent, by reason of unsoundness of mind or intoxication or the giving by him personally or by another of any stupefying or unwholesome Substance, she cannot comprehend the nature and the consequences of that to which she consents.
- Sixthly.—Without her consent, and either with or without fraud, where she is under eighteen years of age.
- Seventhly.—Where she cannot communicate consent.
- Explanation I.—In sub-section, "vagina" means also labia majora.
- Explanation 2.—Consent is an unambiguous voluntary consent when the woman by words, gestures or any kind of verbal or non-verbal communication, expresses willingness to engage in the particular sexual act:  
Subject to the provision that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be deemed to be consenting to the sexual activity.
- Exception I.—A medical treatment or intervention shall not amount to rape.
- Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being below fifteen years of age, is not rape".

Marital rape is excluded from criminalization under Section 375 of the Indian Penal Code (IPC) except when the wife is a minor. This exclusion based on the 1860 colonial code is an expression of the ancient idea that marriage is an indelible consent.

While the Supreme Court in *Independent Thought v. Union of India* (2017) criminalized marital non-consensual sex involving wives between the ages of 15–18, it refused to touch on adult marital rape. In 2024, the Kerala High Court acknowledged marital rape as a reason for divorce, which constitutes a civil law milestone but not criminal liability. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which India is a signatory, emphasizes the protection of women from all types of sexual violence, including marital violence. Further, the legal lacuna also reinforces social attitudes that consider women as property of their husbands.

These mindsets are responsible for underreporting marital rape since victims are often ashamed, unsupported, or even convinced that their agony is acceptable within the institution

of marriage. The absence of legal acknowledgment also results in victims of marital rape being deprived of access to justice, rendering them susceptible to further abuse with no legal recourse or redress. Violence in marriage is widespread in India. Six percent of married Indian women have been victims of sexual violence by their husbands, the government's most recent National Family Health Survey, done between 2019 and 2021, reports. The government and religious groups have been resisting petitions to change the rape laws for decades, usually claiming that sexual consent is "implied" by marriage and cannot be withdrawn. Rights activists maintain that argument is antiquated, particularly when sexual violence against women is on the increase in the country.

The government's October 2024 affidavit to the Supreme Court contended that criminalizing marital rape would "disturb the institution of marriage," instead depending on the Protection of Women from Domestic Violence Act (PWDVA), 2005, which defines sexual abuse as domestic violence but does not have penal provisions.

This leaves survivors with few civil remedies, like protection orders, instead of criminal justice.

## **5. The Neglected Problem of Male Victims and Domestic Violence Against Men:**

While legal reform has tended to center on the situation of female victims, male marital rape victims are neglected. There are several reasons for this, including stereotypes about masculinity, which view men as incapable of being sexually assaulted or of being subjected to rape by women. These issues are very women centric and therefore were specifically included in the Act in order to grant relief. These solutions although would have been accessible under the ordinary course of law but implementing the act made sure that these solutions are spread to the women targeted by the problem of Domestic Violence. It also becomes important to recognize the reality that domestic violence targeted towards men is not always by the wife or partner; but also through the wife's or partner's relatives. Domestic violence is not only physical, but psychological and emotional as well.

Section 24 of The Hindu Marriage Act, 1955 grants both men and women the right to maintenance during the pendency of the case under consideration. The court, in these cases, considers the income of both parties, i.e. the husband and wife to decide on maintenance. But,

the same right is not granted to a man under the Special Marriage Act. An exception to Section 125, Criminal Procedure Code, has set the precedent that if a woman has abandoned the matrimonial home without any cause then the husband can deny paying maintenance. Any aggrieved man by way of any form of violence can always approach the Court by filing a Writ Petition for protecting his right to life and liberty or by lodging an FIR under any of the Sections of IPC that are relevant to his case.

As there may not be a different law in sight for the moment, but with every reason for amendments and precedents, an explicit picture of a system for protection of rights will take shape. It can never be overlooked that violence is encountered by all whether male or female but the instances of occurrence differ. Gender Neutral Laws are the solution only when equality in the society is attained. Men are provided redressal through different avenues. Until and unless any machinery is available for the protection of the rights of men a redress shall ever remain in action.

## **6. Societal Perceptions and Cultural Barriers:**

India's patriarchal framework configures marriage as a sacrament in which the autonomy of women is secondary to family honor and economic security. Source 4 mentions that women in rural areas tend to blur marital rape into "conjugal duty," while urban research, including one conducted in Manipur, reported merely 12% of women reporting marital rape even though 68% admitted its psychological damage. The institution of marriage in India constitutes a problem in the area of the concept of consent because of the traditionally held stereotypical gender roles. The society is male-dominated and the woman is supposed to submit herself to the wishes of her husband, so it can be said that marital rape is to be the norm.

In addition to that, the intimacy taboo culture that encapsulates marriages as well as shame that comes from reporting marital rape also denies the voice of the women. Indeed in real sense, either by ignorance or through stigmatization, a great number of women, particularly women from rural parts may never assume whatever was undertaken to them amounts to rape. Also, the economic dependence, the fear or threat of divorce or abandonment does not permit women to complain such abuse. Other aspects such as cultural beliefs of marital fidelity and family honour complicate the entire issue.

International Perspectives Around the world the concept of marital rape has developed in the recent past. Marital rape has been criminalized in most western nations as they believe that marriage does not mean consent.

Most developed nations like the United States of America, the United Kingdom, and Canada have made marital rape an offence. The United Nations has also called on nations to repeal laws that permit marital rape, thus affirming that any form of sexual violence is unacceptable, independent of the status of the victim as regards marriage. India's inability to not have criminalized marital rape stands in contrast to the other countries' international commitment to gender equality and human rights. Male victims experience heightened stigma as a result of masculine cultural expectations. In India, men who report abuse will be mocked by police officers and ostracized from support groups, creating a silence enforcing cycle.

## **7. Jurisprudential Evolution and Challenges:**

### **Judicial Activism vs. Legislative Inertia:**

The Supreme Court's current review of petitions attacking the marital rape exception under Article 14 (right to equality) and Article 21 (right to dignity) is a turning point.

In *RIT Foundation v. Union of India* (2022), the Delhi High Court's divided verdict highlighted the clash between constitutional rights and preservation of society, as Justice Shakhder held the exception "a patriarchal relic".

By contrast, the 2024 affidavit of the government cautions against "excessive criminalization" and prefers "remedial measures within marriage" over penalization. Cross-Country Jurisprudence In 150+ nations around the world, including the U.S. and U.K., where spousal exemption ended in 1993, marital rape is criminalized. In contrast, Nepal's Supreme Court in 2022 held criminalizing marital rape solidifies the bond of marriage through mutual respect—a precedent which Indian petitioners have referred to.

## **8. Religious Narratives and Community Pressures:**

In real sense, because of ignorance or because of stigmatization, most women, particularly those from the rural communities may never regard whatever was done to them as rape.

Furthermore, the economic dependency, the threat or fear of divorce or abandonment does not enable women to report such abuse. Others such as cultural precepts of nuptial fidelity and family honor complicate the entire question. As Hindu personal law, guided by the Manusmriti, traditionally positions women as guardians of family honor and requires them to suffer marital indignities, Indian Islamic jurisprudential argumentation is sharply polarized on the issue. The conservative clergy reject criminalization as "anti-family," whereas pro-reform intellectuals focus on Quranic teachings promoting mutual consent. In Manipur, where 58% of the women surveyed associated marital rape with "sin," religious leaders played a crucial role in changing attitudes through community discussions.

## **9. Social and Psychological Impact:**

### **4.1. Emotional and Psychological Effects on Women:**

The emotional and psychological impact of marital rape on women is deep and far-reaching. Women tend to suffer extreme trauma, such as depression, anxiety, post-traumatic stress disorder (PTSD), and a feeling of powerlessness. Victims can also become socially stigmatized, especially when the society or culture does not criminalize marital rape.

Findings by Smith (2019) reveal that the majority of women who have been subjected to marital rape feel entrapped within the relationship because they are economically dependent on the perpetrator or fear isolation from their social group.

### **4.2. Emotional and Psychological Impact on Men :**

Although less written about, the psychological and emotional impact of marital rape on men is no less important. Male victims are also more likely to suffer even more societal stigma than female victims since they can feel emasculated or ashamed to come forward and report the crime. Men in most cultures are socialized to think they must always want sex and thus suffer from confusion, guilt, and depression when they are raped by their wives. Research shows that male survivors of marital rape also tend to face isolation and mistrust of their claims, thus aggravating the trauma they experience.

## **10. Social problems:**

There are numerous stereotypes for women and sexuality like women enjoy forced sex, women say "yes" if they say "no" when it comes to sex, such a belief exists. A wife has to have sex with a husband which in Indian culture, both from the mainstream as well as from

pornographic media, makes men do so. And it compels them to think that they should always disrespect a woman's protest. Victim Blaming Game is one that strongly contributes to Indian society. However, also trick women into feeling they might have "sent the wrong signals" and blame themselves for unwanted sex. Bad wives is the concept popular in Indian society, where they assume being "bad wives" because they don't want to have sex unwillingly.

- **The concept of Patriarchal society:**

It has been said that "A good husband makes a good wife", but we Indians have taken it a bit differently, making it 'a good wife is the one who satisfies her husband all the times he wanted, and then call it as his love' and a good husband is someone who can show his masculinity over his better-half. This system of Patriarchal society can be seen in India where we are treating married women as chattel only.

## **11. Consequences / Effects of marital rape:**

- Clinical depression
- Fear
- Anxiety and restlessness
- Lack of confidence
- Lack of self esteem
- Hate yourself too much

Long-term symptoms such as insomnia, eating disorders, sexual dysfunction, low self- image, and so on are some of the long-term consequences for which no legal, societal, or governmental assistance is available. If this continues, a majority of the population will keep being unhappy, and nothing can be done to improve their situation by government action/policies to uplift/empower them, because, as we have illustrated, the problem starts behind closed doors.

## **12. Pathways to Reform:**

In India, marital rape exemption is increasingly talked about as a deviation from women's rights. To date, legal experts, human right activists and many people have called for the inclusion of marital rape as an offence on the nation's legislation. Others contend that this is an important step towards advancing towards the abolition of discrimination of women, towards women's rights, and also towards dealing with violence against women.

In 2019, the Indian Law Commission published a report suggesting reconsideration of the age of consent and laws relating to marital rape. Nonetheless, there has been little intention to amend the law following the government stating that criminalising rape within marriage goes against the family setup and marriage. The argument has drawn a lot of criticism because people believe that by failing to criminalise marital rape then the law will turn out to be a tool to encourage abuse and gender inequality.

### **13. Legal Recommendations:**

**Criminalize Marital Rape:** Revise IPC Section 375 to eliminate the marital exception, consistent with constitutional protections. **Gender-Neutral Domestic Violence Laws:** Enlarge the PWDVA to cover men and LGBTQ+ persons, adding psychosocial support.

**Specialized Courts:** Create speedy courts with specialized judges to deal with marital rape and domestic violence cases, minimizing procedural delays.

Marriage is the coming together of two individuals who have respect for each other. For this, marital rape must be brought under the purview of the law and society must be educated from the elementary school level.

Marital rape is one of the most horrific types of sexual assault that can happen within a family. The women victims do not come forward with their sufferings because of the nature of the activity and the accompanying issues of secrecy of relationships, internalization of patriarchal domination, and most of the time, because of their economic dependence.

The patriarchal frame of mind has led the law to close its eyes to the pitiable ordeal of battered women, and the law does not even acknowledge marital rape to be a crime, to say nothing of imposing any sanctions in such a situation. No matter the age, socioeconomic status, race, or ethnicity, rape happens in all types of marriages.

Our criminal laws do not incorporate the policy of culpability for marital rape. This appears to be a violation of Indian Constitution Articles 14 and 21. The Indian legal system is concerned about the non-criminalization of marital rape.



The judiciary should take steps to safeguard women to protect them. Married women should be treated with respect and should not be subjected to sexual violence or assault. Consequently, this section has a very narrow definition of sexual assault, and there is no legal provision at present that safeguards married women. The Supreme Court has ruled that the rape of a minor wife is a crime and has released a revolutionary verdict that suggests a law formula for making child marriages illegal from inception. But, the major spouses could not win court sympathy to legalize marital rape for the Supreme Court to acknowledge.

#### **14. Conclusions:**

Rape for a woman is not merely sexual violence or physical violence; it is linked with negative feelings like guilt, self-blame, and self-esteem which can be traumatic for the victims. Marital rape is one of the most deplorable types of sexual assault that can take place within a family. The women victims do not come forward with their sufferings because of the nature of the activity and the accompanying issues of secrecy of relationships, internalization of patriarchal domination, and most of the time, because of their economic dependence. The Supreme Court has declared the rape of a minor wife to be a crime and has issued a groundbreaking decision recommending a legislative formula to make child marriages unlawful from the start. But, the major spouses have failed to elicit judicial sympathy to obtain marital rape recognized by the Supreme Court. Marital rape in India is still a matter of debate that raises the problem of discrepancy with culture, law, and Constitution. Even though, in the newly amended criminal laws, the Bharatiya Nyaya Sanhita of 2023 has also incorporated the protection to the minors but the problem of forced sex within the marriage for adult partners is still not addressed. India's failure to criminalize marital rape and tackle domestic abuse against men mirrors deeper tensions between constitutional morality and cultural conservatism. Although judicial precedents have eroded patriarchal immunity, legislative lassitude and societal taboo entrench impunity.

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