

# When No Means No - A Legal Examination of Marital Rape Statutes, Legislative Challenges, and Human Rights Implications

Ankit Shaw

Student of BBA. LL.B. (hons.), Adamas university, Kolkata

## Abstract:

In India, marriage is a legally and culturally significant institution, often arranged and based on religious customs. It establishes legal rights and obligations between spouses, governed by personal and civil laws. Marital rape, also known as spousal or partner rape, refers to non-consensual sexual acts forced upon one spouse by the other within marriage. The important as well as essential element of marital intercourse is consent without it, it is known as physical violence as well as sexual abuse. Victims of marital rape experience both physical and psychological harm, including trauma, fear, and a sense of betrayal. Even though, traditionally sexual intercourse within marriage was claimed as a right of spouses, but as per to society involving in an act without the consent of the spouse is now broadly classified as rape. Despite the increasing recognition of various penal laws in India, marital rapes have arisen in the last two to three decades. Indian legislature has been given the most onerous task of enacting laws for the safety, security and development of the country by the Constitution of India. But there is a legal vacuum towards addressing and eliminating the issue of marital rape. Addressing marital rape involves legal reform, public education, and support for survivors, aiming to protect individuals' rights within all relationships. In this paper, our study highlights about the issue of marital rape and the legal statutes, interpretation and legislative challenges regarding marital rape.

**Keywords:** Marital rape, Marriage, Constitution, Legislature, Violence, Consent, Sexual abuse.

## Introduction:

India is the world's seventh largest country, with a land area of 3,287,263 sq km. It is the home to a rich culture and is considered as one of the world's oldest civilizations and also known as one of the world's largest democratic country. If we discuss about democracy the main or the most important point is all about respect for human rights where there is clearly explained democracies protect and promote human rights, such as freedom of expression, freedom of association, and freedom of assembly but we are here as to discuss about the rape especially marital rape<sup>1</sup>. 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 then at the same time marital rape means marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent. The lack of consent is the essential element and doesn't always involve physical violence. Marital rape is considered a form of domestic violence and sexual intercourse.

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<sup>1</sup>"India", by R. Champakalakshmi, Stanley A. Wolper, [<https://www.britannica.com/place/India>], (9<sup>th</sup> November 2024)

Although, historically, sexual intercourse within marriage was regarded as a right of spouses, engaging in the act without the spouse's consent is now widely classified as rape by many societies around the world, and increasingly criminalized. However, it is repudiated by some more conservative cultures<sup>2</sup>.

The issues of sexual and domestic violence within marriage and the family unit, and more specifically, the issue of violence against women have come to growing international attention from the second half of the 20th century. Still, in many countries, marital rape either remains outside the criminal law, or is illegal but widely tolerated. Laws are rarely enforced, due to factors ranging from reluctance of authorities to pursue the crime, to lack of public knowledge that sexual intercourse in marriage without consent is illegal.

Verifiably, for the most part in the eyes of the world assault was seen as a tort of robbery or as a wrongdoing. In this case, property harm does not imply to be a wrongdoing which was legitimately recognized as a harm against the casualty, but instep to her father or husband's property. Hence, by definition a spouse might not be assaulted by a spouse. In (1609–1676) **Sir Mathew Solidness** portrayed that the spouse cannot be charged with the assault with his spouse in History of the Supplications of the Crown, distributed after death in 1736, where he composed that "*The spouse cannot be blameworthy of an assault committed by himself upon his legal spouse, for by their common assent and contract the spouse hath given up herself in this kind unto her spouse, which she cannot withdraw*"<sup>3</sup>. Too, American and English law subscribed until the 20th century to the framework of coverture, that is, a legitimate convention beneath which, upon marriage, a woman's lawful rights were subsumed by those of her husband. The suggestion was that once bound together by marriage, a companion might no longer be charged with assaulting one's life partner, any longer than be charged with assaulting oneself.

**Kersti Yllö** states in the prelude of Understanding Marital Attack in Around the world Setting, "In a few social orders, consent is not without a doubt something that an individual life partner can give. The families that coordinated the marriage guarantee her changeless consent. Control over a wife's sexuality was as it were a parcel of the more essential control that men had in all other locales concerning her. A husband's control over his wife's body appears in addition be seen in the way disloyalty between a life partner and another man was built; for case in 1707, English Ace Chief Value **John Holt** delineated the act of a man having sexual relations with another man's companion as "the most raised interruption of property". For this reason, in various social orders there was a conflation between the infringement of ambush and treachery, since both were seen and caught on as an encroachment of the rights of the companion. Spousal attack was considered a property wrongdoing against a companion, not against a woman's right to self-determination.

The property to be withheld in a female was her virginity; this was the item. Taking after this line of basis, a woman was (and still is in various social orders over the globe) to start with the property of her father, at that point, upon marriage, the property of her husband. Therefore, a man may not be arraigned for attacking his have companion since she was his proprietorship. Be that as it may, if another man attacked someone's companion, this was essentially taking property (a women's sexuality). In English conventions, "bride capture" (a man claiming a woman through attack) was thought to be taking

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<sup>2</sup>Marital Rape and Law, by Bhagyashikha Saptarshi, [ <https://articles.manupatra.com/article-details/Marital-Rape-and-Law> ], (9<sup>th</sup> November 2024)

<sup>3</sup>Marital rape SC hearing: 'Marrying victim does not absolve a rapist of his crime', argues Karuna Nundy, The Hindu, [ <https://www.thehindu.com/news/national/supreme-court-on-marital-rape-exception-hearing-oct-17/article68759384.ece> ], (10<sup>th</sup> November 2024)

a father's property by ambushing his young lady. In this way, ambush laws were made to "guarantee the property interface men had in their women, not to secure women themselves.

In a few societies, marriage is organized for the reason of making get to multiplication. In these circumstances, the parties do not essentially assent to marriage (in the case of constrained marriage). Following this rationale, if assent is not portion of marriage, at that point it is not essential for intercut. The independence of the spouse is too regularly compromised in societies where bride cost is paid. Beneath standard law in certain parts of Africa, constrained sex in marriage was not precluded, although a few circumstances, such as amid progressed pregnancy, promptly after childbirth, amid feminine cycle, or amid grieving for a perished near relative, were recognized as giving the spouse the right to deny sex.

Both residential and universal law have recognized assault as a wrongdoing against honor and notoriety. For occurrence, **Article 27 of the Fourth Geneva Tradition** states that "*Ladies will be ensured against any assault on their honor, in specific against assault, intense prostitution, or any other shape of foul ambush.*" "*Not until the final half century was assault caught on to be an offense against the lady, against her respect, instep of against her family's or her husband's honor,*" the Universal Criminal Court statute recognizing sexual viciousness as savage wrongdoings against the individual did not come into impact until the 1990s.

### Legal Framework for Marital Rape:

Marital rape means sexual intercourse between two married partners without the consent of the other partner. Historically, marital rape is not recognized by the law in our country, because of the traditional assumption that marriage means consent to sexual relations. However, over the time we have seen a continuous change in the attitude of society and marital rape has been emerged as a global issue, but still people are seeing it as women as primary victim which leads to gender bias. The legal framework surrounding marital rape varies significantly across different countries and often creates debates due to legal, cultural, and societal norms.

The issue of marital rape clearly violates the **Article 14, 15, and 21** of the Constitution of India. Article 14 of the Constitution of India which states Right to Equality, it embodies that the principle that the law should apply equally to all, without discrimination. Article 15 of the Constitution of India which states Prohibition of discrimination on grounds of sex. Article 21 of the Constitution of India says Protection of Life and Personal Liberty stating that "No person shall be deprived of his life or personal liberty except according to procedure established by law". Article 21 of the Constitution of India also states Right to Sexual Privacy which states a fundamental principle that every individual has the right to live with dignity and to have control over their body. In the case of **State of Maharashtra And Another v. Madhukar Narayan Mardikar**, the Supreme Court emphasized that every woman has the right to her sexual privacy and that it is not permissible for anyone to invade her privacy at their own discretion. Therefore, the marital exception doctrine, which decriminalizes marital rape, impinges upon this right to sexual privacy of a married woman, rendering it illegal. Section 63 of the Bharatiya Nyaya Sanhita (BNS) stating the definition of Rape is not specially associated with the issue of marital rape<sup>4</sup>. In India, Section 63 of the **Bhartiya Nyaya Sanhita** does not recognise marital rape as rape by excluding it from the ambit of rape by **exception 2 of section 63** which states that: "*Sexual intercourse or sexual acts by a man with his own*

<sup>4</sup>Marital rape in India, Samridhi M, [<https://lawetopus.com/clatalogue/clat-pg/marital-rape-in-india/>], (9<sup>th</sup> November 2024)

wife, the wife not being under the age of eighteen years of age, is not a rape”<sup>5</sup>. Section 64 of the Bharatiya Nyaya Sanhita which defines the Punishment for Rape stating different types of offense or punishment related to sexual crimes or the definition of consent, but it is not directly connected to marital rape. In the case of **Hrishikesh Sahoo v. State of Karnataka**, the Court rejected a petition filed by a husband seeking to drop charges of rape under Section 376 of the Indian Penal Code, levelled against him by his wife. The court declared that marriage doesn’t give the license to release your ‘Inhuman Creature’ with our married partner<sup>6</sup>. Section 66 of Bharatiya Nyaya Sanhita defines Punishment for causing death or Persistent Vegetative State which is not directly connected to marital rape, but it states about the trauma or the psychological impact on a person who has experienced rape. Section 79 of the Bharatiya Nyaya Sanhita defines Word, Gesture or Act Intended to insult the modesty of a women and it is related to the concept of marital rape in the sense that it addresses situations of non-consensual acts within marriage. Section 498A of the Bharatiya Nyaya Sanhita deals with the offense of Cruelty by a Husband or his Relatives towards a Wife. This includes mental or physical harassment, cruelty, or any act forcing wife to commit suicide or cause grave injury. Marital rape can be considered a form of mental and physical cruelty or non-consensual sexual act resulting in psychological trauma and physical assault. The legislature of our country needs work towards the concern of marital rape and the laws regarding marital rape. The most important fact about the legal system of India is that in this country, making sexual intercourse with your married partner without consent above the age of fifteen is not considered as a criminal offense or a rape. The legal framework for marital rape has been evolved over the decades and but still many countries including India needs to take serious actions and make implementations of new laws by the legislature. And it is also required for the society to cut off the cultural gap and understand the concept of consent within marriage.

### **In-Depth Analysis of Landmark Case Studies on Marital Rape:**

**R v. R (1991) – United Kingdom:** This historic case is among the most significant in the history of the law pertaining to marital rape. Before this case, UK law maintained that a husband could not rape his wife since marriage was seen as a perpetual consent. In the case of R v. R, this presumption was contested, and the British judicial system's perspective on marital rape underwent a sea change. The plaintiff in this instance was a woman who had been married to the defendant for a number of years. The defendant gradually started coercing his wife into having sex against her will. The complaint was made to the police following an incident in which he physically coerced her into having sex. The defendant contended that the idea of marital rape was a contradiction in terms and that, as her husband, he had a right to sexual access to her body. Because of the "**marital consent**" concept, which was prevalent at the time under common law, the main question in this case was whether a husband could be charged for raping his wife. The House of Lords decided in favour of the complainant in a historic ruling, holding that a husband might be accused of raping his wife. The centuries-old belief that a wife granted her permanent consent to sexual relations within the marriage was expressly repudiated by the verdict. This case had a significant impact on how marital rape is treated in the law as well as how society views marital sexual abuse. It shifted the

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<sup>5</sup>Hrishikesh Sahoo v. State of Karnataka And Ors. SLP(CrI) No. 4063-4064/2022 [<https://www.livelaw.in/top-stories/plea-to-criminalise-marital-rape-if-wife-says-no-husbands-only-option-is-to-file-for-divorce-supreme-court-asks-272770>], (9<sup>th</sup> November 2024)

<sup>6</sup>Marital Rape: An Analysis of the Indian Judicial Standpoints, by Sreeya Sengupta, [<https://lawlex.org/lex-pedia/marital-rape-an-analysis-of-the-indian-judicial-standpoints/27068>], (9<sup>th</sup> November 2024)

legal landscape in the UK toward acknowledging women's autonomy and consent in marriage by establishing a precedent that marital rape was a criminal offense.<sup>7</sup>

**Marital Rape in India – The Case of Independent Thought v. Union of India (2017):** India's complicated legal and cultural environment makes it an interesting case study. Although Indian law does not specifically prohibit marital rape, there have been continuous legal efforts to close this protection gap. One such instance is the case of Independent Thought. In this instance, the group Independent Thought filed a public interest litigation (PIL) contesting the Indian legal exception that permitted males to engage in non-consensual sexual relations with their wives if the woman was older than fifteen. Marital rape was not a crime under Section 375 of the Indian Penal Code (replaced by section 63 of BNS) if the victim was older than 15. The case concerned whether the marital rape exception should be overturned because it let husbands to lawfully rape their wives under the age of eighteen without getting their consent. The Delhi High Court declared in 2017 that having sex with a wife who is between the ages of fifteen and eighteen constituted rape, making marital rape against this age group illegal. However, India has yet to address the larger problem of marital rape for women above the age of eighteen. In addition to highlighting the legal and cultural obstacles to fully acknowledging marital rape as a crime, the case marked a major step forward in challenging India's laws against it. Although the decision shielded younger women, adult women are not criminalized, which maintains a societal and legal divide in shielding married women from sexual abuse.<sup>8</sup>

**Hrishikesh Sahoo v. State of Karnataka:** In this case, an appeal was filed concerning the crime of marital rape, which is a contentious issue in Indian law. The wife of Hrishikesh Sahoo accused him of raping her during their marriage, which at the time was not specifically illegal in India. Due to the wife's complaint that her husband had sexually assaulted her throughout their marriage without getting her consent, she was charged with rape under Section 376 of the Indian Penal Code (IPC). The case brought up important legal and societal issues regarding the punishment of marital rape in India, which at the time was not regarded as a crime under the IPC because of the legal exceptions pertaining to marital relationships.

### Legal Concerns of this case:

1. **Marital Rape:** The main question was whether, in accordance with Indian law, a husband's forced sexual relations with his wife without her consent qualified as rape. The defence contended that, with a few exceptions (such as where the woman is less than a specific age), husbands are not punished for rape against their wives under Section 375 of the IPC (replaced by Section 63 of the BNS), which defines rape.
2. **Constitutionality of Marital Rape Exception:** The case also brought up constitutional issues regarding whether the Indian Constitution's protections against discrimination (Article 15), equality (Article 14), and freedom from sexual violence (Article 21) were violated by the exception for marital rape (under Section 375 of the IPC).

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<sup>7</sup>R V R [1991] 4 ALL ER 481, [<https://lawtutor.co.uk/r-v-r/>], (12<sup>th</sup> November 2024)

<sup>8</sup>*Independent Thought vs Union Of India* on 11 October, 2017, by Madan B. Lokur, [<https://indiankanon.org/doc/87705010/>], (12<sup>th</sup> November 2024)

3. **Rights of Women in Marriage:** Whether the laws regarding sexual consent within marriage needed reform to recognize marital rape as a crime and to ensure that women's bodily autonomy and consent were respected within marital relationships.

#### Observations of the Court:

1. **Constitutional Analysis:** While Indian law has historically seen sexual interactions within marriage as a husband's right, the Supreme Court acknowledged the larger social and legal discussion around marital rape and noted that this perspective has been changing. The Court investigated whether the existing exception in Section 375 of the IPC infringed upon fundamental rights, including women's bodily autonomy and dignity.
2. **Gender Equality and Dignity:** The Court pointed out that protection from sexual violence, including within marriage, is a part of the right to life and personal liberty guaranteed by Article 21 of the Constitution. The issue was whether the omission of marital rape from Indian law violated a woman's fundamental rights and was discriminatory.
3. **International Standards:** The Court examined human rights norms and international law, noting that marital rape is becoming more and more illegal in many nations. The Court examined whether India's legal system complied with changing international standards for women's rights and gender equality.
4. **Consent in Marriage:** Regardless of marital status, the Court underlined that consent is essential to sexual encounters. It questioned whether the idea that marriage automatically grants consent for sexual intercourse went against the concepts of consent and physical autonomy.

India's marital rape laws need to be re-examined, as the Supreme Court's ruling in this case made clear. It's crucial to remember that the court examined the specific facts of the case rather than directly deciding whether the marital rape provision under Section 375 is constitutional. The victim's worries regarding sexual assault in marriage were noted by the court, which remanded the case for additional examination of the charges. The Court's remarks in this instance indicated a growing judicial consciousness and readiness to address the problem of marital rape. With Section 375 of the IPC still permitting an exception that shields husbands from prosecution for raping their wives (unless the wife is under the age of eighteen), the problem of marital rape in India is still complicated and up for debate. Although the Court did not reach a definitive decision about the validity of this particular exception, it did draw attention to the growing need for legislative reform in this instance. The case brought marital rape's legal position in India and its effects on women's rights to the attention of the country. It added to the larger conversation about the necessity to criminalize marital rape, which is still an open question in Indian jurisprudence, and to change the country's laws against sexual assault.

It also hinted at a possible change in the court's perspective regarding married women's rights and the necessity of acknowledging consent as essential to all sexual interactions, regardless of marital status. The case is part of the larger legal and societal movement in India that aims to better protect women from sexual abuse and is frequently brought up in conversations regarding the constitutionality of the IPC's marital rape provision.<sup>9</sup>

#### Legislative Challenges and Barriers to Reform:

The word reform means to make an improvement, especially by changing a person's behavior or the struc-

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<sup>9</sup> Hrishikesh Sahoo v. State of Karnataka, [ <https://www.livelaw.in/> ]

ture of something. There are many countries those who are under some reforms like in United states the legality of marital rape has been progressively challenged and reformed. By the year **1993** in U.S has declared every state that marital rape as a criminal offence though the specific laws and definitions varied by state. In the United States, marital rape is considered a criminal offense. Even though the rules have changed, issues with their application and the stigma associated with allegations remain.<sup>10</sup>

In Australia, the criminalization of marital rape occurred in different Australian states at different times, but by 1980, South Australia was the first to make marital rape a criminal offense. Other states followed, and by **1992**, all states had criminalized it. Currently marital rape is illegal across Australia, though challenges remain regarding victim support and prosecution.

The first Scandinavian nations to criminalize marital rape were **Poland in 1932**, followed by Sweden, Norway, Denmark, the former Soviet Union, and Czechoslovakia (Randall & Venkatesh, 2017).<sup>11</sup>

In Canada, marital rape was criminalized in 1983 when the Canadian Supreme Court ruled that rape could occur within marriage. Prior to this, marital rape was not recognized as a crime. Canadian law recognizes marital rape as a crime, and women's rights have been reinforced by legislative reforms.

In India marital rape is still a murky topic, while India does not pointedly criminalize marital rape, there are many calls for reforms, and the issue has been forwarded towards courts, in 2017, the Indian Supreme Court ruled that the law excluding marital rape from criminal liability was a violation of women's rights, but the ruling did not result in a clear legal change. However, public debates and activism continue to push for reform. Despite repeated pleas for reform, marital rape is still not illegal in India.

Then there are some countries those who are on progress toward the reform like in China even though marital rape is not a crime, there have been increasing public debates over the necessity of legal reform, particularly as organizations advocating for women's rights seek more robust safeguards. In current state efforts to criminalize marital rape are ongoing, though it remains a contentious issue.

Although Turkey has taken steps to combat marital sexual abuse, marital rape is still a delicate subject. Despite the lack of a clear, explicit statute that makes marital rape a crime, calls for reform have grown. Currently the issue is under discussion, and legal reforms may be forth coming. There are many more countries those who are slowly progressing.

The barrier to reforms is firstly in certain nations, significant reform may be thwarted by deeply rooted cultural norms regarding marriage and gender roles. Secondly Due to a lack of legal options, social stigma, or fear of reprisals, victims of marital rape may find it difficult to come forward. thirdly in many areas, particularly in conservative societies, the police and legal systems are not always prepared or eager to deal with cases of marital rape.

Marriage is frequently seen as a social institution with distinct gendered duties in societies with firmly established patriarchal norms. In these situations, women's duties are typically limited to being spouses and caregivers, and men are frequently viewed as the head of the household. In these contexts, the notion that a husband may rape his wife in order to violate her permission is occasionally seen as impossible or even as something that is warranted by marital obligation. Views on marriage and consent are frequently influenced by religious perspectives. Marital duties may be regarded as a mandate from a higher power in some conservative or religious countries, where having sex while married is perceived as a moral

<sup>10</sup> Marital rape laws by country, [[https://en.wikipedia.org/wiki/Marital\\_rape\\_laws\\_by\\_country](https://en.wikipedia.org/wiki/Marital_rape_laws_by_country)], (11<sup>th</sup> November 2024)

<sup>11</sup> Marital rape a crime in many countries, an exception in many more, by Shalini Nair, [<https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-an-exception-in-many-more-4821403/>], (11<sup>th</sup> November 2024)

obligation that occasionally takes precedence over the idea of individual consent<sup>12</sup>. Marital rape victims frequently experience stigma, blame, or incredulity in many societies. The tendency in society to blame the woman for "*provoking*" the attack or not "*fulfilling her marital duties*" can make it more difficult for survivors to come forward and seek justice. The idea that a wife shouldn't turn down her husband's sexual approaches can exacerbate this blame-shifting.

There are some oppositional thoughts like reforms that would make marital rape a crime is opposed by several important cultural and religious groups. These organizations frequently contend that such changes will compromise religious beliefs on the integrity of the marriage bond or threaten the institution of marriage. Marital rape laws, according to some, are a kind of "Westernization" that jeopardizes established family units. Then resistance to such legislation arises in some countries, particularly those with inadequate legal protections, because of concerns that charges of marital rape could be used to support divorce or damage a man's reputation. However, compared to other types of sexual violence, evidence indicates that false accusations of marital rape are incredibly uncommon. Although it can be challenging to implement laws that recognize marital rape, even in nations where they do. Cultural prejudices that downplay the gravity of marital rape may nevertheless have an impact on judges, courts, and law enforcement. For instance, prosecutors could be less inclined to file charges if they think the victim "consented" or that the couple should be urged to work things out amicably.

Marital rape has been recognized as a criminal offense on a global scale, reform has progressed at different rates in different nations. The effectiveness of legal reforms is frequently influenced by societal attitudes and cultural norms, and much work needs to be done to guarantee that these laws are upheld and that survivors get the assistance they require. While nations like China, India, and some regions of Africa are still figuring out how to handle the problem within their legal systems, there is a global trend toward acknowledging the gravity of marital rape and advancing victim justice.

### **Impact on Survivor of Marital Rape – Legal, Social and Psychological Dimensions:**

**Legal Dimensions:** The criminalization of marital rape in many of the countries has been excluded from the definition of rape. While some of the other nations have already recognized marital rape as criminal offense and have revised their laws to criminalize marital rape. Other countries are still not able to uphold and bring the idea of consent in marriage. This plays a significant role in affecting the survivors of marital rape as they do not have the access to justice. Even in some of the countries where marital rape is recognized as a criminal offense but still the survivors face significant legal roadblocks. The hurdles faced by the survivors may include proving the non-consensual sexual intercourse as a rape, the gender biased judicial system, or the most traumatic part which the lengthy legal proceedings to seek justice. In India, the spouses under the age of 15 who faces marital rape still faces major barriers to seek justice. The major barriers may include the traditional belief of the survivor and their family members that marriage means a continuous consent to sexual intercourse, the fear of the society also plays a crucial role as a bulk part of the society still do not recognizes non-consensual sex as a rape and specially the legal system itself is also a huge barrier in this case.

**Social Dimensions:** Coming to the social dimensions of marital rape as earlier also discussed in this paper, society can play a very critical role as we know that the society is the backbone behind creating a rule of law. Marital rape should be considered as one of the most important issues and the most serious crime in

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<sup>12</sup>*Criminalizing Marital Rape in India and it's Legal Aspects*, by Monika Kularia, [<https://www.rostrumlegal.com/criminalising-marital-rape-in-india-and-its-legal-aspects/>], (11<sup>th</sup> November 2024)



the eyes of the society. The social attitude of the society towards marriage and gender-stereotype plays a very negative role in making the citizens aware about consent in marriage. The mindset of Indian society is deeply rooted in the cultural and traditional institution of marriage. The patriarchal mindset of Indian society creates a huge problem of gender bias which can be also seen in legal statutes such as Section 63 exception 2 of the Bharatiya Nyaya Sanhita also shows a gender-bias towards women<sup>13</sup>. Societal pressure and obstacles make the survivor to prioritizing family reputation over justice. In India, the family of the survivor who report the situation of marital rape may have to suffer some consequences facing a lot of criticism on the family beliefs of the victim. Survivor also faces the fear of not justice that can destroy the image of the victim in the eyes of society and the honour of the family which is highly valued in Indian society. Lack of education in the society can also be a major reason as regions where the level of education is low, individuals may be not taught about the basic human rights stated by our Constitution of India including the physical rights of a human upon its own body and the concept of consent within marriage. Traditional and cultural beliefs should be challenged by educating the society and making them think critically about the legal aspects of consent and sexual intercourse in marriage<sup>14</sup>.

**Psychological Dimensions:** The survivor of marital rape experiences both immediate as well as the long-term psychological impacts. Marital rape impacts in many aspects of the survivor's mental health and overall being. There are some common psychological and emotional impacts of rapes such as Post-Traumatic Stress Disorder (PTSD), depression, anxiety disorders, flashbacks – memories of rape as if it is taking place again, eating and sleeping disorders, sexual dysfunction, trust issues, guilt, anger and many more<sup>15</sup>. **PTSD**, which is marked by intrusive thoughts about the incident, flashbacks, nightmares, and extreme anxiety, can develop in victims of marital rape. These symptoms can worsen when an intimate partner betrays trust, and the victim may find it difficult to feel safe or secure in any setting. **Depression** is an emotional situation of a survivor in which persistent feelings of despair, hopelessness, and worthlessness are common among victims. In a marriage, betrayal of trust and violation can cause a profound sense of powerlessness and loneliness, which can exacerbate symptoms of depression<sup>16</sup>. **Chronic anxiety** brought on by marital rape upon the survivor might show up as panic attacks, excessive worry, and hypervigilance. Victims frequently experience persistent anxiety because to their dread of additional abuse or harm, which can interfere with their day-to-day activities. In **sexual dysfunction**, the trauma resulting from marital rape may make it difficult for the survivor to have consenting sex. Future relationships may be impacted if it results in physical discomfort, an aversion to intimacy, or a total lack of interest in sex<sup>17</sup>. These kinds of psychological and emotional impacts can totally damage the self-esteem and mental health of the survivor which can also result to causing other disorders that can be more dangerous for the physical health of the body as well.

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<sup>13</sup>Marital rape a crime in many countries, an exception in many more, by [Shalini Nair](#), [\[https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-an-exception-in-many-more-4821403/\]](https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-an-exception-in-many-more-4821403/), (11<sup>th</sup> November 2024)

<sup>14</sup>*Marital Rape: An Examination of Legal and Social Perspectives in India*, by Avinash S Nair, [\[https://www.ijfmr.com/papers/2023/5/7622.pdf\]](https://www.ijfmr.com/papers/2023/5/7622.pdf), (11<sup>th</sup> November 2024)

<sup>15</sup>*Effects of Rape: Psychological and Physical Effects of Rape*, by Samantha Gluck, [\[https://www.healthplace.com/abuse/rape/effects-of-rape-psychological-and-physical-effects-of-rape\]](https://www.healthplace.com/abuse/rape/effects-of-rape-psychological-and-physical-effects-of-rape), (11<sup>th</sup> November 2024)

<sup>16</sup>*Marital rape and its impact on the mental health of women in India: A systematic review*, by Agarwal N, Abdalla SM & Cohen GH, [\[https://journals.plos.org/globalpublichealth/article?id=10.1371/journal.pgph.0000601\]](https://journals.plos.org/globalpublichealth/article?id=10.1371/journal.pgph.0000601), (11<sup>th</sup> November 2024)

<sup>17</sup>*What Is Sexual Dysfunction?*, Ann Pietrangelo, [\[https://www.healthline.com/health/what-sexual-dysfunction\]](https://www.healthline.com/health/what-sexual-dysfunction), (11<sup>th</sup> November 2024)

**Conclusion:**

It is inexcusable to allow non-consensual sexual acts to remain illegal on the pretext of holy marriage. Criminalizing marital rape is a significant assertion of gender equality, individual liberty, and human rights. It is not just a legal change. Many nations still have antiquated marital rape exclusions, which are frequently based on archaic ideas of marriage as a place of implied consent, despite advancements in some areas<sup>18</sup>. Such exclusions violate victim's rights, sustaining gender-based violence and a perilous double standard. The marital bond between spouses does not imply that the wife has given her husband unquestionable permission to have sex with her whenever he pleases or he pleases or that the husband is permitted to engage in non-consensual sexual contract with her. As was previously said, there is strong opposition to making marital rape a crime from the current administration, lawmakers, and the highest court. Preventing the possible threat of abuse against males and safeguarding the stability of the sacred institution of marriage are the challenges. When the same act is committed within the boundaries of marriage, the Apex court of India, which has categorically said that "*rape is a deathless shame & the gravest crime against the human dignity*," becomes blindfolded. This is painful. Even former Indian Chief Justice Deepak Mishra, who was a trailblazer in judicial activism through cases like **Shakti Vakini v. UOI**, **Shafin Jahan v. Ashokan K.M.**, **Navtej Singh Johar v. UOI**, and **the Sabarimala case** that allowed women admission, is hesitant to make marital rape a crime and has abdicated his responsibility. Marital rape is expressly illegal in about 70 countries. Therefore, in order to protect, secure, and empower women in the fullest sense and to preserve the true spirit of the Indian constitution, it is imperative that we speak out against this deeply rooted religious and cultural stereotype of male chauvinistic society and make marital rape a crime in India in line with globalization and shifting social values.

The concept of gender neutrality also very critical and also the neglected part of marital rape because the society see's marital rape as a criminal offense with the eyes of woman as a prime victim. Many times, arguments have been made to make the definition of "rape" gender-neutral. These arguments are also made in relation to rapes that occur in marriages. Husbands will not be able to employ those even if the **Domestic Violence Act's** criminal provisions are added or the exception 2 of section 63 of The BNS is eliminated. Men in our society also faces similar issues like the women do such as family prestige, fear of losing respect, and so on.<sup>19</sup>

The Central Government has argued that the matter calls for a thorough socio-legal response rather than a rigid legal one, and it has opposed the criminalization of marital rape at the Supreme Court. The administration has voiced fears that making marital rape a crime might have a major impact on the institution of marriage and cause major problems in marriages. Prevention is key to effectively combating maritime rape. Programs for education and awareness can assist coastal communities and mariners in identifying the problem, identifying the warning indications, and reporting incidences. Encouraging shipping firms and maritime associations to create and implement crew member safety regulations is also crucial. A multifaceted strategy involving law reform, education, prevention, care for survivors, and international collaboration is needed to address sea rape in India. The ultimate objective is to provide a setting that prevents marine rape, supports survivors, and ensures victims receive justice. Ultimately, recognizing that "**No Means No**" within marriage strengthens the broader pursuit of justice, gender

<sup>18</sup>“*Marital rape exclusion clause*”- *A gross transgression of Article 14, 21 of Indian Constitution – A critical analysis*, by M. N. Kaushika, [<https://blog.ipleaders.in/marital-rape-ipleaders/>], (12<sup>th</sup> November 2024)

<sup>19</sup>“*Criminalising Marital Rape in India*”, [<https://vajiramandravi.com/upsc-daily-current-affairs/mains-articles/criminalising-marital-rape-in-india/>], (12<sup>th</sup> November 2024)



equality, and human dignity. By embracing this principle, nations affirm their commitment to protecting all individuals from violence, enabling them to live free from fear within even the most intimate of relationships.