

# Marital Rape in India: An Overview

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**Abstract – “Rape”, the most basic but most serious violation of women's human rights, is punishable by law and unanimously regarded as a heinous crime worldwide. The Supreme Court of India has stated very clearly that "rape is an immortal disgrace and the most serious crime against dignity". On the other hand, marital rape is rape that takes place within the confines of the institution of marriage. This is physical abuse committed by her husband herself. Under the Indian scenario, under Section 375 of the Indian Penal Code, the rape of a woman over 15 years old is not considered a punishable offence. The disclaimer clause is not just an accidental loophole in the law, but has its roots in the English legal system which can be traced back to a judgment made nearly 300 years ago by CJ Lord Hale in the 20th century. According to the National Family Health Survey (2015), 10.4% of married women of all ages complain of domestic sexual violence. Even constructivist social theory holds that this social reality is due to men having dominated the legislative and political spheres since ancient times. The rationale for marital reluctance is the concept of "irrevocable implied consent", which means in layman's terms that once a woman is married, she has given her consent. ..**

**Keywords- Marital Rape, Immortal, IPC, Unanimously, Confines**

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## INTRODUCTION

Violence within the four walls or violence committed within the family has always intrigued law reformers not only in the West but also in India. The marital rape waiver clause, which grants the husband complete immunity and favors the husband, has been debated and questioned a lot lately. The most basic premise behind rejecting marital rape like any other common rape is that it occurs within the confines of the socially acceptable institution of marriage. Thus, it is acceptable for a woman to agree to lifelong intercourse by accepting a marriage proposal. Herein lies the fundamental fault of man-made social institutions. Throughout the marriage, the legal couple will go through a number of experiences, where they will experience some social, psychological, and emotional upheaval. However, given the foresight of the legislature in drafting the law on rape, it is expected that married women will never object and give up their most basic right in the world. the altar of the rapist.

Webster's dictionary and some socially accepted definition of rape indicate that any man can rape a woman regardless of the state of the relationship between the two. Only the same interpretation of judicial and criminal law sought to separate the husband's compulsive sex from the act of rape. The reason behind this, if one can read in the various legal arguments, is that the courts expect the wife to have sex with her husband in the marriage contract. This compulsive nature of sex arrangements most of the

time, works for the benefit of men as sexual obligations are forced due to the fact that men in Indian society get the resources, money and provide for the needs of women/family in the household.

To understand the impact of rape in marriage and the severity of the problem, one must first understand the different types of marital rape that have been broadly defined by sociologists.

## WHAT IS MARITAL RAPE?

'Spousal rape occurs in all forms of marriage, regardless of age, social class, race or ethnicity. The term "marital rape" refers to "unwanted sexual intercourse" by a man with his wife by force, threat of force, or physical violence, or when the woman does not may agree. The term "unwanted sex" includes all forms of penetration (whether oral, vaginal or anal) performed against her will or without her consent. Spousal rape, broadly defined, can be classified into three parts as-

- **Battering rape:** In this form, both physical and sexual violence are present. The majority of marital rape victims fall under this category. In it, women are battered and raped by their husbands.
- **Force-only rape:** In this form, husband uses only the amount of force necessary to coerce his wife.

- **Compulsive/Obsessive rape:** In this form, assaults involve torture and/or “perverse” sexual acts and are often physically violent.

### FORMS OF MARITAL RAPE:

- **Sexual coercion by non-physical** – it's a social coercion where the wife is forced for a sexual intercourse and is reminded about her duties as wife.
- **Forced sex-** when a women is not willing to have intercourse and use of physical force is involved
- **Battering Rape-** use of aggression and force against the wife for sexual intercourse
- **Force only Rape-** does not necessary batter the wife but uses force against unwilling wife
- **Obsessive Rape-** involves sexual sadistic pleasure by the husband

The reason issue of rape in marriage has not been discussed so far is due to lack of awareness about women's empowerment and low literacy rate especially in a country like India, The spread of social norms dominated the psyche of women for centuries. is also an important reason why women never consider rape in marriage as rape. Since the time of Manusmriti, where beating wives and sexually assaulting them were justified by maintaining family hierarchy, women have sought to believe that obeying their husband's orders and satisfying their sexual desires is their duty as an ideal wife.

The issue of marital rape may have similarities to the issue of abuse/violence of children by their own parents, which, until very recently, has been argued as a non-negligible behavior any law as it is a family affair in the family the presumption that the parents are always there in the best interests of the child, even when committing acts of violence.

Pauline Bart's 1975 survey found that only 0.4% of women in a sample survey of 1,000 women admitted to having been raped by their husbands, thus showing the social stigma attached to these events. The argument against criminalizing marital rape is that if we give legal status to marital rape, the already overwhelmed justice system with a long history of addiction will cases of marital disputes and women may be inclined to abuse this provision, which is a correct and counter-argument for Section 498A (IPC). To prevent this from happening, we can have separate courts on the fast court line for rape victims to bring to justice quickly and prevent frivolous cases from flooding the courts. , the punishment, if the case is wrong, should be high and severe.

Making marital rape sacred/legal could be seen as progressive legislation and would be consistent with the regulation of a gradually empowering society

where female literacy rates have increased and Awareness of sexual rights, human rights and domestic violence is promoted by government and non-governmental agencies. This would go a long way in changing the mindset of a predominantly patriarchal society, where social relationships are dominated by historically entrenched assholes

*In S v. H*, the case involved a husband who was charged with indecent assault after attempting to rape his ex-wife and subsequently appealed for common assault. The judge, which heard the case, ruled on the arguments presented on behalf of the appellant and said in his own words: “A husband cannot be found guilty of raping his wife. They say it's the law of the land. And if so, he also can't be guilty of assaulting his wife if he uses force to have sex with her against her will. Such force is part of rape or attempted rape. What is tolerated for the purpose of rape cannot be condemned for a lesser offense. From this assumption established, he concluded that the appellant's argument was completely unfounded. This one-sided argument affects women emotionally and psychologically. This is just one example of a case where prejudice goes against basic human rights. As a result, not reporting cases becomes the norm as there is no established law on the matter and judicial prejudices against women's rights.

### MARITAL RAPE AND LAWS IN INDIA

While we have made progress in all possible areas, marital rape is not considered a crime in India. Despite the amendments, legislative commissions and new laws, one of the most humiliating and debilitating acts is not a crime in India. Examining the options a woman has to protect herself in a marriage shows us that the law is non-existent or ambiguous and that it all simply depends on the interpretation of the court.

The final version of Section 375 of the Indian Penal Code, which appeared after deliberation by the selection committee, is a crystallization of Section 359 of Macaulay's draft penal code. Section 375, the Indian Penal Code (IPC) rape provision, echoing very ancient views, is mentioned as an exception clause “A man has intercourse with his wife, who women not under 15 years old, is not rape. . .”

Section 376 of the IPC punishes rape. According to the Section, the rapist should be jailed for at least 7 years but possibly up to life or a sentence of up to 10 years and also incur a fine unless the woman being raped is his own wife. , and no less. Over 12 years of age, in which case he shall be sentenced to imprisonment in either description for a term of up to 2 years accompanied by a fine or both. This refers to the crime of rape, within a very narrow scope, stipulating that the crime of marital rape only exists if the woman is under 12 years old, but if it is between 12 and 15 years old, it is a crime. less severe, attracting milder penalties. When the age exceeds 15, the wife will not be protected by law, directly

violating human rights regulations. How can the same law set the legal age to marry at 18 while protecting against sexual abuse, only those under 15? For more than 15 years, there was no cure for the woman. The Indian Penal Code was amended in 1983 to make room for marital rape during the legal separation period.

**As per the Indian Penal Code, the instances wherein the husband can be criminally prosecuted for an offence of marital rape are as under:**

- When a woman is 12 to 15 years old, violations can be punishable by imprisonment for up to 2 years or a fine, or both;
- When a woman is under 12 years old, if she commits a crime, it can be punished by imprisonment for a term of at least 7 years but up to life in prison or a sentence of up to 10 years and also a fine.
- Rape of a legally separated wife, an offense punishable by imprisonment for up to 2 years and a fine;
- Rape of women over 15 years old with impunity.

In 2005, the Protection of Women against Domestic Violence Act 2005 was passed, although it does not consider marital rape a crime, it does consider it a form of domestic violence. Under this law, if a woman is raped in marriage, she can go to court and be legally separated from her husband. This is just a specific piece of legislation and Congress needs to do more about marital rape. Spousal rape reflects an individual's adversities. It is not only rape of a woman's body, but also rape of her love and trust. Being the victim of sexual violence at the hands of her husband made her feel insecure and scared. Her human rights are sacrificed on the altar of marriage. The Indian Penal Code deals with this form of rape in a very sporadic manner. The various provisions of the IPC regarding sex not only reinforced Victorian morality but also women's inaction.

Thus, it can be seen that the law considered as the savior of the victim is not enough and not enough to protect the rights of those who suffer from rape in marriage. The advanced underlying argument in favor of this so-called "law" is that consent to marriage itself includes consent to engage in sexual activity. However, implied consent to engage in sexual activity does not imply consent to experience sexual violence. It is commonly thought that, as in sadistic acts, in marital rape, the woman is said to have consented to the violence. However, it is not possible to distinguish rape and sex on the basis of violence alone. Violence creates feelings of fear and insecurity and this causes women to submit to sex and this cannot be interpreted as consent to sex. This fear may be increased because she feels that she has not fulfilled her

husband's wishes. The distinction between consent and against disagreement is fundamental in criminal law.

The definition of rape (Section 375 of the IPC) requires a change. The narrow definition has been criticized by Indian and international women and children's organizations, which emphasize that including oral sex, groping and penetration by foreign subjects with rape connotations would be inconsistent with the provisions of the constitution, natural justice or equity. Even current international law says that rape can be accepted as "sexual penetration, not only criminal penetration, but also intimidation, coercion and use of force against the victim or abuse input of any object, no matter how small". Article 2 of the Convention on Elimination of all forms of discrimination against Women. explicitly includes marital rape in the definition of violence against women. The emphasis on these provisions is not intended to mitigate, but rather benefit the victim, not the suspected criminal.

### **OBJECTIVE OF THE STUDY**

1. Study on what is marital rape.
2. Study on forms of marital rape

### **RESEARCH METHODOLOGY**

**Sources of Data Collection:** Researchers used secondary sources to collect data such as books, journals, online databases, research publications, and articles..

**Scope of study:** Research seeks to address the extent of marital rape in human evolution and the development of definitions of basic human rights proclaimed by a number of interest groups around the world. Researchers who look at the problem holistically to bring about collective social law change to solve the problems of subordinate groups find no voice in the country's socio-political discourse.

### **DATA ANALYSIS**

**Emergence of the concept:** Despite the revolutionary legal reforms implemented over the past century and a half that have resulted in the granting of some special rights to women and wives, the law and legislators have been surprisingly silent. On the abolition of the law of marital rape against the husband. Blackstone, the famous English jurist of the 18th century, wrote about the marriage contract between a man and a woman in the category of "private economic relations". purely economic relationships such as those between master and servant or between parents and children. In the 18th century, as patriarchy prevailed, husbands were certainly considered superior, and the right argument was also discussed under this hypothesis, which

Blackstone called their rights and duties - in private economic relations?.

This is not so simple, however, because the ideology behind the social contract of marriage distinguishes the relationship between men and women from other private relationships in which people engage. According to the principle of conjugal union, which is problematic in itself, but as we shall return later, a man and a woman after marriage become one entity. More important to our research here, however, is that even their legal identities merge. To put it more simply, a woman's legal existence is suspended the moment she decides to make a sacred vow to a man. Worse still, it was assumed that her rights were merged with her husband's, and that whatever was fair to her husband would be considered fair to her. She had to carry out all her daily activities under the protection, protection, care and supervision of her husband, to whom her legal identity was attached. This is probably why after marriage a woman has to add her husband's first and last name to her name and it is now used across all legal documents.

More strikingly, however, 19th-century legal discourse sought to justify the unequal and unjust arrangement between a man and a woman on the basis of natural law. Using the argument of material power as an argument, they argue that women are men's protectors and responsibilities. The fact that although men and women are not equal in physical strength has been used to explain how even nature wants men to be superior to women. The scholar's description of the family structure sheds light on the whole situation: "The wife's residence follows the husband's residence; The whereabouts of the child can be changed by the parent. Therefore, the law of residence is consistent with the law of nature. "Despite the fact that ideological considerations have undergone significant revisions over the years and women's rights and empowerment has forced society to view relationships in a On the other hand, the question of how to justify women's individual rights in marriage remains surprisingly regressive. To the dismay and disgust of women's rights advocates, the definition of marriage within the framework of the law and under the broad dialectic of rights has remained the same over the centuries.

The big question that must be asked from the outset is: can or should we investigate a phenomenon that, by legal definition, does not even exist? Since forced sex between husband and wife is not legally considered "rape", the question is whether a woman herself would consider the incident "rape" is part of a larger study of physical violence between husbands and wives. The investigation analyzed transcripts of interviews with women who had been beaten by their husbands to see what information could be gathered about the sexual aspects of beatings. Increased attention to the plight of sexual assault victims has led to the establishment of Rape centers around the world to provide legal, medical and social services to victims. person being raped. Reports from these centers shed

light on this sinister problem in society. Women interviewed through these surveys described behavior committed by their husbands as falling within the traditional definition of rape. South Africa's Rape Support Center has demonstrated that of the women who are raped, only 15% are raped by complete strangers.

Many wives consider themselves responsible for sexual assaults. Due to patriarchal hegemony, a woman must believe that it is her duty to provide her husband's body for sexual satisfaction and that failure to do so would go against social and family norms. With regard to marital rape, feminist theory holds that the legal system has, since ancient times, been built and modified by men and a predominantly male justice system, therefore, Explanations of family behavior also focus on men. The Social Socialization Theory, another variation of feminist theory, explains how a particular gender role guides sexual interactions between spouses in marriage. He said that, in marriage, women are always taught to be calm and passive while men are trained to be dominant and aggressive.

## CONCLUSION

Marriage is the meeting of two people in mutual respect. According to the United Nations, educating boys and men to consider women as valuable partners in life, in the development of society and in achieving peace is just as important as taking legal action to protect them. Women's human rights. It is important to bring the crime of rape in marriage to the scope of the law and to educate the society from school. Researchers have been trying to understand the nature of this heinous act. The issue of marital rape is largely ignored and therefore we need to pay attention. Modern leaders (Kiran Bedi, 2015) who advocate for marital rape victims also agree that the practice is a form of rape and is concealed under the guise of marital intimacy. He is not a defender to hide acts of violence. Therefore, this article attempts to cover the concept of consent in marital rape cases and why it should be defined in Indian law.

## REFERENCE

- [1] Dr. Garima Pal (2018). 'Issues & Challenges Related To Marital Rape In India.' International Journal of Humanities and Social Science Invention (IJHSSI) 7.04: pp. 58-69.
- [2] Anderson, Michelle J. 2003. "Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates." SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.439504>.
- [3] "Marital Rape Laws Globally." In Marital Rape, pp. 177-86, 2016.

- [4] Dhingra, Sumati (2015). "Criminalisation of Marital Rape in India." SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2604919>.
- [5] Lisa R. Eskow: The Ultimate Weapon? Demythologizing Spousal rape and Reconceptualising its Prosecution, Stanford law Review, pp. 677-709 (vol. 48).
- [6] Priyanka Rath (2007). Marital Rape and the Indian Legal Scenario, India Law Journal.
- [7] Keith Burges- Jackson, Wife Rape, University of Illinois Press, Public Affairs Quarterly, pp. 1-22 (vol. 12)
- [8] Hale, Matthew (1972), 1 History of the Pleas of the Crown, p. 629. (1736, London Professional Books)
- [9] Torres, M. Gabriela, and M. Gabriela Torres (2016). "Reconciling Cultural Difference in the Study of Marital Rape." In Marital Rape, pp. 9–18
- [10] Mill, J.S. (1988). The Subjection of Womened. S.M. Okin, Indianapolis, Hacket, p. 33.
- [11] Doherty, Joshua Leo (2012). "Marital Rape and the Third-Class Citizenship of Married Women in Cameroon." SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2229027>.
- [12] Dube, Dr Dipa, and Dipa Dube (2006). "License to Rape: The Indian Viewpoint." SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.888964>.
- [13] Randall, Melanie, Jennifer Koshan, and Patricia Nyaundi (2017). The Right to Say No: Marital Rape and Law Reform in Canada, Ghana, Kenya and Malawi. Bloomsbury Publishing.

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