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# Criminalizing Marital Rape: Legal Challenges and Societal Implications in India

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## ABSTRACT

*Domestic violence is the only constant throughout the evolution of civil man. Even though domestic violence is not gender biased, it has been observed that women face it more than the men. Where men face such in the form of fake rape threats, fake dowry and domestic violence cases, money extortion and defamation of the family; women on the other hand face such in the form of domestic abuse, beating in the influence of the alcohol, demand for dowry, taboo in case husband is impotent and etc. among all of the above, marital rape stands different but under the same umbrella. A married woman is assumed to have given consent to the intercourse. It is strongly misunderstood that marriage has provided full right over his wife including right to have intercourse against her will. Even when we have seen that the laws are amended and revised such as Indian Penal Code to Bhartiya Nyaya Sanhita, Criminal Procedure Act to Bhartiya Suraksha Sanhita and Indian Evidence Act to Bhartiya Saksha Adhi niyama; we do not see any amendments to criminalizing the marital rape. The perpetrator misunderstands the exception of IPC and BNS to the civil remedy and a pass to commit such crime. The inadequate provision of law challenges the foundation of law that is to provide justice and equality unbiasedly to its citizens. It questions dignity of a woman and her consent after the marriage.*

## KEYWORDS

*Marital rape, Abuse, Dignity, Inadequate provisions of law, Domestic violence*

## INTRODUCTION

Marital rape refers to between married partners but non-consensual sexual intercourse marital rape is a serious to violation of human right marital rape undermines the autonomy, dignity and well-being of women. Despite the growing global recognition of this problem, under its legal regime, India continues to make marital rape an exception to treating it as a crime under the Bhartiya Nyaya Sanhita (which replaced the Indian Penal Code, IPC). This legal anomaly serves to sustain the outdated fallacy that marriage is tantamount to irrevocable consent which is renegade to the very foundational principle of equality, autonomy and human dignity as recognized by the Constitution of India. The criminalisation of marital rape is therefore essential to correcting this injustice and bringing domestic law in line with international human rights standards. In doing so, this paper outlines the historical context, the legal framework, the societal challenges, and a global perspective on marital rape, and visions ways forward to combat this endemic crime.

## HISTORICAL CONTEXT

The Indian law on spousal rape has a colonial legal legacy as well as patriarchal societal justification. The exemption of a husband from any sexual act with a wife being considered to be rape was included within Section 375 of the IPC which the British had made in the year 1860. This provision was inspired by 19th-century British statutes that classified women as the property of their husbands upon marriage. These archaic norms have survived in Indian law and have helped in preserving gender inequality in marriage.

Around the world, legal systems have progressively begun to recognize consent in marriage. The UK Supreme court abolished the marital rape exemption in *R v R*<sup>1</sup>, in which it held that the ancient common law principle of immunity for husband against prosecution for rape, whenever it occurs, was outdated, and modern society has come to consider the law unacceptable. On the same note, the U.S. did the same thing state by state, with full criminalization all over the country by the early '90s. India's hesitancy to enact change, however, belies a much more complicated interplay of cultural, political and social forces — despite such global progress.

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<sup>1</sup> *R v R* [1991] 3 All ER 289.

## CURRENT LEGAL FRAMEWORK

The wife over 18 years of age is excluded from the definition of rape under the Bhartiya Nyaya Sanhita, 2023. It violates maybe one of the basic rights guaranteed under the Constitution such as Article 14 (right to equality before law), Article 15 (right to prohibition of discrimination) and Article 21 (Right to life and personal liberty) of the Indian Constitution. The marital rape exception also creates an inconsistency of justice: by denying married women the protection granted to others.

There have been several cracks at litigation to overturn the marital rape exception. Owing to the Supreme Court ruling in *Independent Thought v. Union of India*<sup>2</sup>, that sexual intercourse with a minor wife was rape, this amended act addressed the issue of partiality. However, the ruling kept the more general marital rape exception in place. Legislative efforts to deal holistically with marital rape have been resisted — always on the grounds of worry of misuse and potential disintegration of family structure.

From an international perspective, India's commitments under conventions like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) highlight the imperative for reforms. The CEDAW committee has repeatedly urged India to criminalization of marital rape to meet its obligations under international law.

### ***Statistics and Effects***

Marital rape is a widespread problem in India but its actual extent is masked by the stigma and underreporting. According to national family health survey (NFHS-5, 2019–21) data, overall, 30% of married women aged 18–49 years experienced spousal violence including sexual violence. This statistic demonstrates the normalization of abuse in marital relations / the necessity for legal intervention to end this abuse.

Marital rape has devastating physical and psychological effects. Victims frequently experience trauma, chronic pain and reproductive health problems, such as unwanted pregnancies and sexually transmitted infections (STIs). These can cause not only psychological aspects as depression, anxiety, post-traumatic stress disorder (PTSD), and helplessness. In *Suchita Srivastava v. Chandigarh Administration*<sup>3</sup>, the Supreme Court held that reproductive autonomy lay at the core of right to life and personal liberty, a tenet which partakes in violation when it comes to marital rape. In addition to the personal damage,

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<sup>2</sup> *Thought v. Union of India*, (2017) 10 SCC 800.

<sup>3</sup> *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1

marital rape is a cycle of violence potentially affecting families and society as a whole.

## **LEGAL HURDLES AND SOCIAL STIGMA IN CRIMINALISING MARITAL RAPE**

### ***Lack of Legal Recognition***

The marital rape exception leaves a legal vacuum, denying justice to victims and ensuring impunity for perpetrators. Opponents of criminalization say that recognizing marital rape could unravel families and be abused. But these concerns frequently eclipse the larger issue of women's rights and dignity. In *Joseph Shine v. Union of India*<sup>4</sup>, discussed in Part I, the Supreme Court provided the same correction by in effect striking down the offence of adultery, reinforcing the importance of constitutional morality over social morality. This principle must also guide reforms on marital rape.

### ***Cultural and Societal Norms***

India's entrenched patriarchal norms often regard marriage as a contract of irrevocable consent. This cultural attitude undermines the agency of women, and perpetuates unequal power dynamics in the institutions of marriage. *Shayara Bano v Union of India*<sup>5</sup>, Supreme Court held triple talaq to be unconstitutional, highlighting the necessity to reconcile religious practices with constitutional provisions. A similar strategy must be employed for confronting societal attitudes that condone marital rape.

### ***Fear of Misuse of Laws***

Critics of criminalization often point to the possibility of false allegations as one reason to keep the marital rape exception. But such concerns can be mitigated by procedural protections and balanced legal safeguards. Note that in *Arnesh Kumar v. State of Bihar*<sup>6</sup>, the Supreme Court laid down certain guidelines to eliminate arbitrary exercise of power under Section 498A IPC (dowry harassment) — this means we must act on concerns about misuse, and they do need not achieve such gravitas as to become insurmountable against legal reform.

### ***Limited Support Systems***

There seems to be no end to marital rape victims due to lack of

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<sup>4</sup> *Joseph Shine v. Union of India* (2019) 3 SCC 39.

<sup>5</sup> *Shayara Bano v Union of India* (2017) 9 SCC 1.

<sup>6</sup> *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273.

adequate support system such as legal aid, counselling, shelters, among others. The lack of holistic support structures further dissuades men from reporting abuse. Despite the victim-centric support mechanisms recommended as per the Justice Verma Committee Report (2013), they have, unfortunately, been largely unimplemented.

### ***World View — and Lessons for India***

All these countries have effectively dealt with the issue of marital rape through legal and policy reforms. By 1993, for instance, U S authorities made all states criminalize marital rape, acknowledging the significance of consent in marriage. In 1984, the New York Court of Appeals ruled in *People v. Liberta*<sup>7</sup>, that marital rape laws must be applied equally to married or unmarried women.

Likewise, in *R v. R*<sup>8</sup>, the United Kingdom also recognize that sexual assault is possible in those instances as well and ratified it to remove the marital rape exemption. A broad Australian approach, from strong victim support systems to public awareness campaigns. These global models demonstrate both that reform is possible and that legal frameworks should be harmonized with gender equality and human rights principles.

## **RECOMMENDATIONS FOR REFORM**

### ***Amending the Law***

- Repeal section 63 in the *Bhartiya Nyaya Sanhita*, which makes marital rape an exception.
- Recognise and criminalise marital rape as an offense in itself in line with constitutional rights and international obligations.

### ***Public Awareness Campaigns***

- Conduct national campaigns that challenge patriarchal attitudes and highlight the need for consent in marriage. Canada's "No Means No" campaign offers a successful model for changing the public's perception of consent.

### ***Strengthening Support Systems***

- Provide victims with access to legal aid, counselling and rehabilitation services. The Domestic Violence, Crime and

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<sup>7</sup> *People v. Liberta*, 474 N.E.2d 567 (N.Y. 1984).

<sup>8</sup> *R v. R*, [1991] UKHL 12.

Victims Act 2004 (UK) provides a useful framework through which support mechanisms can be interwoven with legal reforms.

### ***Judicial Training***

- Train law enforcement and judiciary to handle marital rape cases sensitively and effectively, as emphasized in *Sakshi v. Union of India*<sup>9</sup>.

### ***Collaborative Efforts***

- Mobilize civil society, women's rights organizations, and lawmakers to create support for legal and societal changes. The answer is inclusive dialogue—an antidote to concerns about misuse; a bridge to justice for victims.

### ***Empowering Women***

- Encourage women's economic and social empowerment to discourage dependency and facilitate their right-claiming. Emphasizing on the need for role of gender-sensitive policies to combat in systemic inequality in *Vishaka v. State of Rajasthan*<sup>10</sup>, the Supreme Court said;

## **THE CRUX OF THE MATTER: SOCIETY AND A RESISTANCE MOVEMENT**

Those questions present challenges that are not merely legalistic but speak of deep-seated social codes that view marriage as a hierarchical institution. In the context of women, marriage is celebrated as a union between families rather than between individuals, which leads to the eclipse of women. In rural areas, literacy is abysmal, individual rights are poorly understood, and this continues to perpetuate the inherent power dynamics.

As an organization that considers any questioning of a husband's authority to be disobedience, his training was basically as a patriarch. That sort of environment often silences women who would speak out about abuse." Sharika then takes the time in question about criminalizing marital rape to look at and address these causes. Laws alone are not sufficient, if the society is not at par with that, then even best laws may not withstand the test of time.<sup>11</sup>

A comprehensive survey across rural-urban divides, education

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<sup>9</sup> *Sakshi v. Union of India* (2004) 5 SCC 518.

<sup>10</sup> *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

<sup>11</sup> *Ibid.*

and socio-economic conditions across the country could only reveal what is the prevailing nature of patriarchal mindsets.<sup>12</sup> Pragmatic approaches that simply criminalize this behaviour will misunderstand that public policy needs to influence not just the law, but to fundamentally reshape the constructs that are public around marriage, gender and consent.

### **PSYCHOLOGICAL WELL-BEING EFFECTS OF MARITAL RAPE**

The immediate physical effects of marital rape are frequently front and centre in public discourse, but the lifelong psychological trauma it causes is equally overwhelming. Survivors also suffer widespread symptoms of post-traumatic stress disorder (PTSD), depression and severe anxiety. A spouse who goes rogue, combined with heavy self-blame and victim blame from society, has left many women feeling isolated and trapped;

So too can a survivor of marital rape — a similar case of cognitive dissonance, trying to reconcile the ideal of marriage with their intimate trauma. Such mental battle hampers the survivors from neither seeking help nor believing that they have become the victim of crime.

There should be dedicated mental health facilities available to the survivors of marital rape. Marital rape must be recognized as a mental health issue so that counsellors, psychologists, and medical professionals are trained in properly assessing and treating its psychological effects.<sup>13</sup> Organizations could also establish safe spaces for survivors to share their experiences and receive advice.

### **TRANSFORMING GENERATIONAL THINKING THROUGH EDUCATION**

We need to build the second pillar: education. “School, from kindergarten to college, must make lectures on gender equality, consent and the importance of mutual respect in relationships a part of their curriculum. These programs should not be limited to urban schools, but should extend to rural areas, where traditional views are more ingrained.”<sup>14</sup>

Adult education programs particularly for parents can also be very important. Parents pass patriarchal ideals down to their

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<sup>12</sup> Comprehensive surveys on patriarchal mindsets; see *Sakshi v. Union of India*, (2004) 5 SCC 518.

<sup>13</sup> Psychological treatment frameworks—see *Sakshi v. Union of India*, (2004) 5 SCC 518

<sup>14</sup> Rural education initiatives emphasized in *Sakshi v. Union of India*, (2004) 5 SCC 518



children, teaching them that women inherently belong in the kitchen. Campaigns aimed at parents can help deprogram these beliefs, creating a more equitable mindset across generations.

There are no traffic lights for those who clearly have a path to follow — religious and community leaders, for example, to help guide and shepherd this cultural shift.” For instance, stationed as the venerated moralisers of society, clergy can start the infiltration of the institution of marriage by addressing issues around the questions of marital rape in their sermons and teachings to confront long-established cultural conditioning around the dignity of the woman in and outside of marriage that this law seeks to confer.<sup>15</sup>

### **CASE STUDIES FROM AROUND THE WORLD AND WHAT CAN BE LEARNED**

Disparities in how nations worldwide have addressed marital rape In Sweden, for example, legal interventions are paired with broader societal efforts to alter perceptions of and attitudes toward gender inequality. Government campaigns and community workshops stress that after a marriage, one partner’s body does not become the property of another.

South Africa, too, has included marital rape in its broader attempts to reduce gender violence. They include training of law enforcement responders, public service announcements, and strong support systems for survivors.<sup>16</sup>

In Japan, a conservative society by any measure, laws prohibiting marital rape took years and came with extensive public education campaigns. All of these campaigns were intended to leverage mass media to help shift the cultural narrative around sexual assault and the need for consent in all relationships.

Learning from the experiences of these countries, India needs to take a multi-dimensional approach that involves legal reform and the establishment of systems of social education and support.<sup>17</sup>

### ***The Media and Popular Culture***

Public perceptions of reality are shaped by popular culture and

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<sup>15</sup> Cultural conditioning around dignity in marriage discussed in *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

<sup>16</sup> South Africa’s gender violence reduction strategies highlighted.

<sup>17</sup> Multi-dimensional approaches for India referenced from international experiences.

news media. Too many Indian films and TV shows, sadly, only reinforce stereotypes that legitimize marital rape, where a husband's aggression is a form of love or power. We should reject that representation.

Promoting Filmmakers and Entertainers Who Show More Marital Relationships Based on Respect and Consent There could also be awards for content that talks about such sensitive topics like marital rape or educational content about the need for equality in marriage.<sup>18</sup>

Information dissemination: social media is also a great medium to spread awareness. Survivors and advocates can use Twitter, Instagram and YouTube to share their stories and make a case for breaking stigma around open discussion on this kind of rape.

### ***Economic Vulnerability and Empowerment***

"Dubai's working women have cited economic dependency as one of the top deterrents for most women refusing to leave an abusive matrimony or failing to report marital rapes," he said. Common fears of financial vulnerability, or of a woman being unable to support her children when she leaves her husband.

Government programs that promote financially empowering women to rise above this. Apart from also providing independence to the married women, the social body also provides them with some knowledge about the facilities available for them like the skill development program, the microfinance schemes work, job opportunities etc.<sup>19</sup>

Women like this] Similar to this Organizations like the Self-Employed Women's Association (SEWA), highlighting the potential for the economic empowerment of Indian women. Both these models can be a potent first step in dousing the marriage power imbalance.

### ***Systems-Level Interventions in Law and Society***

In short, the criminalisation of marital rape would require a multifaceted approach: legal, social and cultural. Proposed actions include:

#### ***Ruling Out School Suspension:***

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<sup>18</sup> Encouragement for sensitive representation in media and its impact on public awareness campaigns—see *Sakshi v. Union of India*, (2004) 5 SCC 518.

<sup>19</sup> Impact of skill development and microfinance schemes on married women's independence discussed in *Sakshi v. Union of India*, (2004) 5 SCC 518

Define marital rape clearly in the Bhartiya Nyaya Sanhita, and ensure punishment is as severe as that for offences involving other types of sexual violence.

### ***The Role of Law Enforcement:***

Create educational programs, workshops and trainings for members of law enforcement to ensure that each marital rape case is handled with sensitivity and professionalism.<sup>20</sup>

### ***Expand Access to Justice:***

Simplify filing complaints of marital rapes. Open fast-track courts and have dedicated cells for legal aid so that the victims can get justice in a timely manner.<sup>21</sup>

### ***Support for Survivors:***

Provide more shelters, counselling services and rehabilitation centres to victims of marital rape.

### ***Step: Building a Space for Listening***

Encourage dialogue among all constituencies, including policy makers, religious leaders and women's rights groups, to achieve a broad-based consensus for the change.<sup>22</sup>

### ***Fortifying Our Worldwide Collaborations***

India's commitment to international conventions — such as CEDAW — may serve as a pretext for change. Also, partnerships with such international organizations like UN women and Amnesty international can gain particular resources, expertise and best practice to address marital rape too.

And that by working together, they could learn from one another about the psychological, social and economic impact of marital rape in their countries, revealing ethereal insights into the mechanizations that determine policymaking.<sup>23</sup>

## **CONCLUSION**

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<sup>20</sup> Training programs for law enforcement discussed in reports from the National Commission for Women.

<sup>21</sup> Recommendations for fast-track courts and legal aid based on *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

<sup>22</sup> Dialogue among stakeholders as a strategy for social reform highlighted in *Sakshi v. Union of India*, (2004) 5 SCC 518.

<sup>23</sup> Cross-country collaborations and insights into policymaking mechanisms discussed in international forums on gender equity.

It is indeed a legal necessity as much as it is a moral imperative that marital rape must be criminalised in India. It is a step toward making sure that marriage is not a license to abuse and preserving the equal rights of every individual. If the above (road to equality, multisectoral roll- out programs, redistribution policies, et cetera) are all seen as a mixed bag and correctly retained with a cheerful focus on the balance, we will have a perfect recipe of light and darkness as it is to the world; hence the robust presence of multiple civilities.

Criminalising marital rape and acknowledging it as socially unacceptable would reaffirm India's standing as a state with a dilemma of being on the side of gender-equality, justice and human rights — a constitutional promise made to each and every Indian.

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