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## Marital Rape: An Unaddressed Stigma

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*Throughout all of recorded history, marriage has been revered as a holy union. This bond puts on husband and wife a number of marital duties. Different societies have different ideas about marriage. Every community requires that marriage be solemnized. One of the expectations the husband holds is having physical intercourse with the wife, however, the consummation should always be done with the woman's permission. It is regarded as rape when there is no consent or marital rape. Forceful sexual contact between a husband and wife is regarded as marital rape. Numerous nations have already passed, punished, and repealed legislation pertaining to marital rape. In Indian culture, marital rape is not considered to be rape. There will be no crime of any type committed against the husband who had coercive relations with this wife. The repercussions of marital rape are still largely ignored by society, and it is still regarded as a sensitive subject. It is still viewed as stigmatizing. In this article, the author has tried to discuss the unaddressed stigma of marital rape, legal provisions against marital rape, data on marital rape, types, and position of women's rights protections in Indian society with some relevant case law.*

**Keywords:** *marital rape, marriage, consent, forceful sexual contact, women's rights.*

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### LEGAL PROVISIONS AND DATA ON MARITAL RAPE

Section 375 of the Indian Penal Code defines rape and states that “Rape includes all kinds of sexual assault involving non-consensual intercourse with a woman. However, sexual assault with a married woman by a husband over the age of 15 years is exempted under the ambit of

rape provisions".<sup>1</sup>In cases of rape, the exception under Section 375(2)<sup>2</sup> of the Indian Penal Code draws an unnecessary line between girls under the age of 18 based on their marital status, which is against Article 14<sup>3</sup> of the Indian Constitution. The Supreme Court ruled in the case of *Independent Thought v UOI*<sup>4</sup> that having sex with a girl under the age of 18 constitutes rape whether or not she is married. The prosecution in such a situation is immune, and as a result, cases of assault are not recorded because India is one of the 36 nations that still do not recognise the status of marital rape. In five out of every 100 married women in India who were between the ages of 15 and 49 at the time of the study, as revealed by the NATIONAL FAMILY HEALTH SURVEY (NFHS), their husbands had physically forced them to engage in sexual activity without their consent. Approximately 78.6% of married women in the age range of 15 to 49 years who experienced sexual violence did not disclose it, according to another NFHS study. 12.3% of them sought assistance from any source, with 48.2% coming from their own family, 25.8% coming from their husband's family, 32.82% coming from friends, and only 0.9 percent coming from the police, 0.5 percent coming from a lawyer, and 1.3 percent coming from a social organization.

34,000 rapes have been reported in India according to the National Crime Record Bureau's (NCRB) Annual Crime Report, and 94% of these crimes were committed by someone the victim knew. Additionally, according to Live Mint, "99.1% of rape incidents go undetected, and in most cases, the husband was the criminal. Thus, the average Indian woman experiences sexual assault from her spouse 17 times more frequently than other women do." According to the Domestic Violence Act of 2015, "for the protection of women from sexual abuse and domestic violence, as the name of the act suggests, only provides civil remedies to the victim and she may apply for judicial separation, not for criminal remedy like it is for other cases of sexual assault cases on the basis of the married status of women."Therefore, the absence of legal remedies becomes a significant issue with regard to marital rape. In order to fulfill its duty to combat gender discrimination and discrimination within the same class of gender, the

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<sup>1</sup> Indian Penal Code 1860, s 375

<sup>2</sup> Indian Penal Code 1860, s 375(2)

<sup>3</sup> Constitution of India 1950, art 14

<sup>4</sup> *Independent Thought v UOI* (2017) Writ Petition (Civil) No. 382/2013

state must provide legal mechanisms that guarantee both criminal and civil remedies for women who are victims of sexual and physical abuse in any situation. However, making an attack committed during a marriage illegal takes more than just eliminating the exception; it also calls for changing the legal assumption that the victim gave consent to the intercourse.

## **TYPES OF MARITAL RAPE**

Marital rape is often classified into three types:

- **Battering Rape:** This type of abuse includes both physical and sexual assault. This type of rape affects the majority of victims of marital rape.
- **Force-only rape:** Husbands use the least amount of force necessary to compel their wives.
- **Compulsive or obsessive rape:** Violent sexual actions, including torture, do occur, however they tend to be physical in nature.

### *Marital rape's physical and mental effects*

1. Injuries to non-public organs, laceration, soreness, bruising, torn muscles, exhaustion, and vomiting are some of the physical repercussions of marital rape.
2. Broken bones, black eyes, bloody noses, and knife cuts are just a few of the physical effects that assaulted and raped women by their husbands may experience.
3. Miscarriages, stillbirths, bladder infections, infertility, and the possibility of contracting sexually transmitted diseases like HIV are just a few of the specific gynecological effects of marital rape.
4. Women who are sexually assaulted by their partners are likely to experience serious psychological effects as well.
5. Psychological effects could have long-term implications. Ex-relationships based on trust, disordered eating, depression, sleep issues, and an increase in negative emotions.

## MARITAL RAPE: AN UNADDRESSED STIGMA

Nearly 150 nations around the world have made marital rape a crime, but India is not one of them. In all 50 states of the United States, raping a spouse is illegal, but in the United Kingdom, the punishment can include a life sentence in jail. Even Nepal's Supreme Court has decided that forced sex during a marriage qualifies as marital rape. The nature of marital rape is so brutal, and the victim must spend the rest of her life with a guy who does not respect her permission or her sexual well-being. It is also a very under-reported crime in India because the majority of women are aware that going to a higher court of justice will accomplish nothing because there are no laws pertaining to it. As a result, they also experience social isolation and a decline in their mental health. According to Sir Mathew Hale,<sup>5</sup> "the wife has given herself up to her husband by their joint matrimonial consent and contract, which she cannot retract," hence the husband cannot be charged with rape committed by himself against his legitimate wife.

Since it was practically impossible for a husband to rape his wife or vice versa and because husband and wife were always regarded as "one" under the rules of both man and god, many politicians and judges believed for centuries that a concept like marital rape did not exist. The right to life and personal liberty, as well as the right to health, human dignity, a safe environment, and sexual privacy, are guaranteed under Article 21<sup>6</sup> of the Indian Constitution. The Hon'ble Supreme Court stated in a well-known case that "sexual violence, aside from being a dehumanising act, is an unlawful intrusion of a female's right to privacy and sanctity," and that "rape in itself is a serious blow to the self-esteem and dignity of the victim and it degrades her, leaving behind a traumatic experience."<sup>7</sup> There are provisions regarding the punishment of rapists under the Indian constitution, as mentioned in Section 376<sup>8</sup> of the Indian Penal Code, but there is no provision addressing marital rape. According to the Indian government, criminalising marital rape would have a negative impact on the institution of

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<sup>5</sup> Hale, *History of Pleas crown* (1789) 629

<sup>6</sup> Constitution of India 1950, art 21

<sup>7</sup> *State of Karnataka v Krishnappa* (2000) CriLJ 1793

<sup>8</sup> Indian Penal Code 1860, s 376

marriage. It could also cause marriages to fall apart, which could then increase the number of divorce cases.

The parliament recently rejected a bill that would have made marital rape a crime when it was tabled. Some lawmakers believe that marriage is a sacred institution and that touching will cause couples to fail. They believe that because divorce rates are low in India, the country should be proud of its culture. Without understanding the fact that women in such relationships secretly experience violence and abuse, statements have been made against criminalising marital rape in India. In order to preserve and uphold the "honour," "pride," and "values" of the Indian family, women are encouraged to be "quiet," "tolerant," "adapt," and "compromise," despite the fact that the cost is incest, violence, suicides, and murders.

The sole provision in India that offers any kind of protection to victims of marital rape is Section 375 Exception 2 of the Indian Penal Code. It states that a husband can be charged with rape if he engages in sexual activity with his wife who is under the age of 15. However, the Supreme Court of India, in its decision in *Independent Thought v Union of India*, replaced this age of 15 with an age of 18. Therefore, a woman under the age of 18 has a legal recourse; a wife over the age of 18 does not. So, the victims of marital rape are only partially protected by Indian law. There is no all-encompassing defence against the heinous crime of marital rape.

For a very long time, people have been debating the issue of marital rape because it can be difficult to convince a judge that a marriage-related affair took place without their will. In criminal prosecutions, gathering evidence and establishing it beyond a reasonable doubt is a crucial need. The legislative and the judiciary hesitate before intervening with what takes place inside the sacred marriage and wedlock between the husband and the wife. The state legislature may enact special laws for women and children under Article 15(3)<sup>9</sup> of the constitution. Numerous pro-women laws, such as those against domestic abuse and dowry, have been passed by the legislature, and they have all been put into effect. Marital rape, however, is a subject that is generally ignored by the parliament. But in a recent and well-

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<sup>9</sup> Constitution of India 1950, art 15(3)

known case called *Hrishikesh Sahoo v State of Karnataka*<sup>10</sup>, the high court denied a husband's request to dismiss allegations of rape brought against him by his wife under Section 376 of the Indian Penal Code. He contended that he cannot be accused of rape in light of section 375's exclusion of marital rape from the definition of rape. The exception cannot be wholly encompassing, the court noted. Additionally, the exemption for marital rape is "regressive" and would violate the equality principle entrenched in Article 14 of the Indian Constitution.

In this case, the court ruled that "all human beings under the constitution are to be treated equally, whether they be a man, a woman, or someone else. Any notion of inequality would violate any legal provision and violate Article 14<sup>11</sup> of the constitution. Exception 2 to Section 375 of the IPC cannot change the equality of men and women, which is guaranteed by the constitution. It is up to the lawmakers to consider whether such disparities exist in the law.<sup>12</sup> Additionally, it was decided that "Husband raping a woman is punishable under section 376 of the IPC." A single-judge panel led by Justice M. Nagaprasanna similarly declared, "A man is a man; an act is an act; rape is a rape, whether committed by a man, the "husband," on a woman, the "wife." Additionally, "The institution of marriage does not, cannot, and in my opinion, should not be regarded to bestow any unique male privilege or a permit for releasing a vicious beast. If a guy can be punished for something, he should be punished for it—husband or not.

This court judgement has offered every victim of marital rape some hope, and it has also given legislators another chance to consider criminalising the crime or changing section 375's exemption number 2. It is a long-standing rule that has little relevance in today's fast-paced society. The *Justice Verma Committee (formed by GOI)*, led by the late Justice J. S. Verma, made the recommendation to criminalise marital rape in 2013 and remove the exception to marital rape, a year after the well-known Nirbhaya gang rape case<sup>13</sup>. It also suggested changes

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<sup>10</sup> *Hrishikesh Sahoo v State of Karnataka* (2018) Writ Petition No. 48367/2018

<sup>11</sup> Constitution of India 1950, art 14

<sup>12</sup> Mustafa Plumber, 'Marital Rape Exception Regressive, Violates Article 14; Husband Not Ruler Of Wife's Body & Mind : Karnataka High Court' (*Live Law*, 23 March 2022) <<https://www.livelaw.in/top-stories/marital-rape-exception-regressive-violates-article-14-husband-not-ruler-of-wifes-body-mind-karnataka-high-court-194834>> accessed 25 July 2022

<sup>13</sup> *Mukesh & Anr v State For NCT of Delhi & Ors* (2017) Criminal Appeal Nos. 607-608/2017

to India's laws on sexual assault and the use of the death penalty in the most extreme rape cases. The criminal law (amendment) act of 2013 was replaced by the criminal law (amendment) ordinance of 2013 after the legislature adopted the Verma committee's recommendations. However, the lawmakers decided against making marital rape a crime because they believed it would cause marriages to fail and increase the number of divorce cases. Additionally, the Indian government was advised to make marital rape a crime by the UN Committee on the Elimination of Discrimination against Women (CEDAW). The basic definition of rape in today's society calls for change. The inclusion of oral sex, sodomy, and penetration by any foreign object within the definition of rape would not be in conflict with any constitutional requirements, natural justice, or equity, according to Indian and international women and children organisations. Marital rape is specifically mentioned in Article 2 of the Declaration on the Elimination of Violence against Women as a form of violence against women. The purpose of emphasizing these clauses is to give the victim—rather than the criminal—the benefit of the doubt rather than to tease.

Regarding marital rape, the entire judicial system is a disaster. Right now, marital rape needs to be made a crime. Rape and marital rape are both considered crimes on the same level, and they both carry similar punishments. Although the legal interpretation of Articles 21 and 14 given in Part III (fundamental rights) of the Constitution of India, has significantly broadened the scope to encompass a woman's right to her body's privacy and integrity. In several respects, exception 2 to section 375 breaches articles 21 and 14 of the Indian Constitution. The agony that women endure from marriages like these, where their right to privacy and resistance is violated, must be taken into consideration by legislators. Despite the fact that society has traditionally seen it as normal for women to endure hardships in their marriages in the name of "preserving the family honour," legislators and the judiciary must take the principles of equality into consideration and view marital rape as a crime. The law on marital rape must be gender-neutral. The legalisation of marital rape could improve the standing of women in society by providing them with appropriate recourse and equal protection. Overall, it can elevate the position of women in marriages and the institution of marriage.

## **CONCLUSION**

Only 13 out of every 1000 marriages in India result in divorce; isn't that a wonderful thing? The criminalization of marital rape is thought to raise divorce rates and jeopardise the institution of marriage. The low divorce rate is a result of our society's failure to give women the confidence to speak out against the injustices they are accepting behind closed doors since we have already determined that a wife's behaviour is to submit to her husband and not to disobey him. At what price are we defending our society and our beliefs? The three leading causes of death are homicides, suicides, and domestic violence.

As a progressive culture, it is past time to abolish the distinction between rape and marital rape as well. As we seek to safeguard women's dignity at work while still acknowledging home abuse, we make women even more vulnerable in the eyes of the patriarchal society. No matter the victim's gender, the Criminal Law Amendment Bill of 2013 proposed a revamped definition of rape. We need to educate the public about this stigma, but we can only do so when the government acknowledges that it is ingrained in our society and passes legislation to protect all women, regardless of age, from being raped by their husbands and also provide protection for the same. A woman should be recognised as more than just a nice wife; it should not be her main duty. Women today are becoming independent individuals and working in various fields; their identities are no longer tied to their husbands. The idea of patriarchy is evolving, and the state may empower these women by recognising them as citizens, just like many others, and by-passing legislation against marital rape that will allow them to live freely and confidently.