



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Marital Rape: A Growing Concern Since Ages Context

Pranshu Garg<sup>a</sup>

<sup>a</sup>Symbiosis Law School, Nagpur, India

*Received* 15 March 2024; *Accepted* 17 April 2024; *Published* 22 April 2024

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*Marital Rape is a form of non-consensual sexual intercourse where the perpetrator is the victim's intimate partner or spouse. This research paper provides a comprehensive analysis of the concept of marital rape, its historical context, legal interventions and some historical judgements. Firstly, this paper will go deep into the root causes of marital rape and how it grows as a serious concern in modern times with its roots in societal norms and culture in ancient times. It also explores how in the name of societal norms and cultural acts; this offence went unseen with preparators getting shielded from accountability. Moving forward, it will talk about the legal interventions and how the need to criminalize this offence has increased over the years. Being the core of this paper, it focuses on legal reforms that have recognized marital rape as a criminal offence and challenging all the outdated marital immunity notations. Further, the paper discusses the legal judgements where the courts of law have addressed the issue of marital rape and addressed it as a criminal offence. Finally, it talks about recommendations for criminalizing marital rape and in conclusion how important it is to criminalize marital rape and the legal interventions needed to combat marital rape with a multifaceted approach challenging all the societal and cultural norms and myths.*

**Keywords:** *marital rape, non-consensual sexual intercourse, perpetrators.*

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### INTRODUCTION

Marital rape also known as spousal rape or partner rape refers to non-consensual sexual intercourse or penetration which is committed without the will of the victim by the perpetrator

of rape who is either victim's spouse or intimate partner. It's a form of sexual violation and violence done to the victim's body and also to its human rights. It results in physical, mental and emotional trauma for the survivor.

Marital rape occurs in a pre-context of marriage or intimacy between the partners, where the norms of the esteemed society falsely assume that consent to the marriage is pre-consent or implied consent to even sexual activities. However, society is far away from the knowledge of the fact that consent to sexual activities must be given freely by both partners and getting married is no consent to sexual encounters.

Marital rape can be done in deadly forms like physical forcings, threats, emotional blackmailing, exploitation, coercion and taking advantage of the vulnerability of the victim. It can lead to severe physical, psychological, and emotional consequences for the survivor which often results in fear, depression, and long-term harm.

Many countries have started recognizing it as a criminal offence and also implementing and amending laws to address the issue and prosecute and punish the culprits after legal responses to marital rape have evolved. However, in some regions, legal systems still fail to explicitly criminalize this felony offence, and address and prosecute such cases. Factors often revolve around societal norms, inadequate legal framework, cultural boundaries etc.

Efforts to combat marital rape include educational awareness, campaigns, support aid for survivors and advocacy for gender equality and women's rights.

## **HISTORICAL CONTEXT**

In ancient times, marital rape was highly unrecognized as an offence due to the prevailing beliefs of people that marriage implied permanent consent to everything including sexual encounters and intimacy. Earlier the legal system used to uphold the doctrine of coverture, which means that a married woman is considered to be her husband's property and will be under her husband's authority and protection. It merged the legal identity of a woman with that of her husband upon marriage effectively stripping her of the right to lead her body according to their

own will stripping her of autonomy of her body. In this context, wives were often treated as their husband's property with limited legal resorting against non-consensual sexual activities within marriage.

Throughout the recorded history of marital rape, it was always considered a private matter of the spouses if ever acknowledged at all. Religious and cultural lessons often forced the idea of a wife's moral duty to submit herself to her husband's sexual desires, regardless of her own will, wishes and consent. Legal systems too provided husbands with the impunity of sexual violence against their partners which reinforced a cycle of abuse, torture and power imbalance within the marriages.

The 19th and 20th feminist movements sparked the critical discussions over women's rights and gender equality, which challenged the norms that perpetuated the marital rape. Reformers, social workers and activists advocated for the legal protection of women's rights and it included the recognition of marital rape as a felony or criminal offence.

One of the earliest legal steps occurred in the United States of America during the late 20th century. In the 1970s and 80s, state legislatures began to revise their criminal acts to criminalize marital rape as a criminal offence. Similarly, various legal changes took place in other parts of the world, which were driven by International Human rights standards & other advocacy groups. THE UNITED NATIONS DECLARATION on THE ELIMINATION of VIOLENCE AGAINST WOMEN, adopted in 1993, called members of the state to address the issue of marital rape as a violation of women's rights and ensure legal protection for all the victims. This reformed the centuries-old legal precedents and established marital rape as a form of a sexual offence punishable under the virtue of law.

But despite these changes, challenges remained intact in the enforcement and prosecution of the marital rape laws. Deep-rooted cultural attitudes and societal norms continue the myth of marital equality, making it difficult for the victims of marital rape to come forward and seek justice. In some regions, even today, survivors of marital rape face disbelief and a sense of alienation.

Additionally, legal definitions, penalties and punishments for marital rape vary from jurisdiction to jurisdiction which creates inconsistencies in how cases will be handled and survivors are often supported, some countries also lack laws based on the principle of marital laws, leaving the victims with no legal protection and aid.

'THE #MeToo MOVEMENT' which gained popularity in the 2010's era brought again the attention to issues related to sexual violence, including marital rape. Survivors of marital rape, activists, and social reformers around the globe shared their views and stories which amplified the voice for systematic changes and accountability for the preparators of this heinous offence.

The history of marital rape represents a gradual but incomplete journey towards the recognition of the rights and autonomy of the spouses within the marriage, while significant changes have been made in the legal and social framework of recognizing marital rape as a criminal offence. The ongoing efforts are badly needed to dismantle the deep-rooted norms of considering consent to sexual activities implied with marriage and ensure justice for all the victims of marital rape.

## **MARITAL RAPE & LEGAL INTERVENTIONS**

Legal interventions for marital rape have evolved a lot over time which reflects the changing attitude of society towards gender, consent, and human rights. Historically, marital rape was often unrecognized as a crime due to the societal beliefs of society that marriage implies consent to sexual intimacy. But in recent decades, there has been significant progress in recognizing marital rape as a felony offence and implementing legal provisions to address it.

The various legal interventions for marital rape include the Criminalization of marital rape, legal definitions, consent laws, protection orders, support services and aid by law, educational and awareness campaigns and legal reforms.

## **CRIMINALIZATION OF MARITAL RAPE**

The criminalization of marital rape is one of the most significant legal interventions for addressing marital rape as a criminal offence. In many jurisdictions across the globe, various

laws and codes have been enacted or amended to explicitly criminalise marital rape, treating it as a form of sexual assault or rape regardless of the relationship between the victim and the perpetrator of rape. It is now being recognized as a violation of the victim's fundamental rights and a punishable offence under the law. The criminalization of marital rape sends a clear message to society that marital rape is highly unacceptable and is a grave offence in the eyes of the law and the preparator of it will be held guilty and punished by the law. Penalties & punishments for marital rape may vary widely depending on the jurisdiction to jurisdiction but it often includes the death penalty, life imprisonment, hefty fines and also mandatory counselling for the offender. By holding perpetrators guilty of their offences and accountable for their felony actions, criminalization will set an example for future instances of marital rape and promote a culture of equality, consent and respect within marriages.

While criminalization of marital rape is a significant step towards moving into a rape-free society, challenges come with effective implementation and enforcement of these laws. Orthodox societal norms, cultural attitudes, and legal barriers hinder the survivors of marital rape from reporting instances of marital rape and seek justice through the legal system. Survivors even back off from thoughts of stigma, victim-blaming, retaliation from spouses and lack of support from family and community, further making it difficult for them to seek redress.

The criminalization of marital rape is a critical legal step to recognize the rights of individuals to autonomy, bodily integrity, and freedom from sexual assaults faced by spouses within a marriage. By providing access to justice to the survivors and holding perpetrators of marital rape accountable for their heinous actions, criminalization will help in combating the pervasive problem of marital rape and promote more equal & safer marriages.

## **LEGAL DEFINITIONS**

Legal definitions play an important role in prosecuting and eyeing marital rape. In ancient times, marital rape was a topic that was rarely discussed and was often defined in narrow terms which excluded acts committed by one married partner with another one. However, modern legal frameworks have expanded the definitions of rape to include sexual activities without consent

within marriages. This broader definition ensures that marital rape is a serious offence and is recognized and prosecuted accordingly.

Additionally, these legal definitions also specify that consent to marriage doesn't imply consent to any type of sexual activity, emphasizing the importance of consent in any type of sexual encounter.

Furthermore, legal definitions as a legal intervention for marital rape also help to challenge the harmful cultural attitudes and societal beliefs that not only perpetuate marital rape and other forms of sexual violence but also reinforce myths and unrealistic beliefs in people which do not let survivors redress for justice. This also helps in shifting societal norms and promotes a culture of consent and respect within marriages and intimate relationships.

Legal definitions lay a helping hand for law enforcement officials, prosecutors, and judges in not only identifying the cases but also prosecuting them. However, challenges remain intact in effectively implementing legal definitions as an intervention for marital rape due to cultural, societal and legal barriers which not only hinders seeking justice but also the legal system's reputation.

## **CONSENT LAWS**

Consent laws are another type of important legal intervention for addressing marital rape. Many jurisdictions across the globe have implemented laws that clarify the importance of consent in sexual relationships which includes marriages. This law clearly states and also emphasizes that consent must be freely given and can be withdrawn at any time, regardless of the marital ties between the parties. These laws ensure that spouses can be protected from any type of sexual violence and exploitation within marriage.

Consent law's key aspect is that as a legal intervention for marital rape, they recognize the concepts like individual autonomy and bodily integrity.

By affirming the fact that every individual has a moral right to control their bodies and make decisions about their sexual intimacy, consent laws provide the survivors of rape with legal

protection and aid. Consent laws ensure that spouses are not subject to any type of sexual violence or exploitation within the ambits of marriage or any other type of intimate relationship and that perpetrators are held accountable for their actions.

By promoting a culture of consent and respect within marriages and intimate relationships. Consent laws openly challenge the harmful & orthodox stereotypes and norms that contribute to the prevalence of marital rape. This helps create a safer side for relationships and empowers the victims to knock at the door of the legal system to seek justice.

The concept of consent needs to be raised among married couples and intimate couples to provide support services for survivors and strengthen the legal system for recognizing sexual violence within marriage.

## **PROTECTION ORDERS**

Protection orders are the legal actions that can be obtained by victims of marital abuse to protect themselves from further harm. These orders also maintain further safety as they are known as the restraining order, or domestic violence orders which prohibit the perpetrator from contacting or approaching the victim's house, work area, or any other locations. These types of orders can provide the survivors with a sense of safety and comfort as they prevent any type of further acts of violence or harassment against them.

By getting a protection order, the survivor can assert their rights to live free from violence and assert boundaries with the perpetrator. This is an important step towards a process of healing and recovery.

Protection orders can also act as a complete warning to the perpetrator, signaling that their behaviour is completely unacceptable and will not be tolerated at all by the legal system and is punishable in eyes of law. Violation of a protection order too is a criminal offence in many jurisdictions across the globe, which is punishable by fines, imprisonment, or other penalties. This will surely make perpetrators fear engaging in any further acts of violence & harassment.

However, challenges may intervene in the smooth implementation process of protection orders as survivors may face barriers in smoothly receiving the protection orders like lack of knowledge of the legal process, fear of retaliation from perpetrators or concerns about the impact of the order on their self-dignity and family dignity.

### **SUPPORTING SERVICES & AID**

Support services are important for victims of marital rape to access the resources and assistance they need in healing and the process of rebuilding their lives. Support services as a legal intervention for marital rape mostly include counselling, advocacy, shelter, meditation shelters, and medical care assistance centres for victims of marital rape. These services provide the survivors with emotional support, practical assistance, reasonable access to legal advice, financial help and housing assistance. Supporting services do play a very crucial role in empowering the survivors of the trauma they faced, navigating the legal system & facilitating the recovery process.

Marital rape does have a profound psychological and emotional impact on the survivors of marital rape as they may feel feeling of alienation, burden, shame, guilt, disgrace etc. Support services do provide the survivors with a safe & confidential space to feel what their real feelings were, express their pain openly, and receive validation for their experience. This will lead to stability in their lives and will help them regain a sense of control and agency over their lives.

Support services will even guide the survivors in their safety and well-being. Providing survivors with information about their legal rights, options and resources will assist them in making choices for what is the best interest of themselves and their families.

### **EDUCATIONAL & AWARENESS CAMPAIGNS**

Educational and awareness-related campaigns are crucial for challenging the harmful attitude and beliefs of our orthodox society that reinforce marital rape and other forms of sexual assault. This campaign's main aim is to educate the public about the impact of marital rape, promote respectable and healthy relationships & marriages based on mutual respect and consent, and



also provide information about the available support services for the welfare of the survivors of the marital rape who not only go through physical agony during this phase but also face mental agony & torture. By raising awareness on topics like consensual intimacy acts between both married spouses and intimate partners, changing the orthodox societal norms, and cultural barriers, education and awareness campaigns will be a great help to these survivors to prevent further marital rape and will also support the cause of these survivors getting their rightful justice.

## **LEGAL REFORMS**

Legal reforms are the ongoing struggles to improve and strengthen the legal structure for addressing issues like marital rape. Reforms may include amendments to the criminal laws, family laws and all other relevant statutes to protect the rights of married couples and survivors of marital rape. Legal reforms also include measures such as increasing penalties for perpetrators, expanding the definition of words like sexual violence, improving access to the survivors, and enhancing support services and resources. By addressing the gaps and shortcomings of the existing laws, legal reforms can help a lot to ensure that the survivors of marital rape receive the best protection from the legal system's side and the best support they need.

Legal reforms ensure that they align with the international human rights standards which include conventions such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Istanbul Convention on prevention and combat assaults against women.

Data collection and research, establishing mechanisms for conducting surveys to collect data on marital rape cases across the country, will also help in legal reforms.

## **CASE LAWS**

As of now, marital rape has not been explicitly criminalized in the eyes of Indian law but surely there have been several landmark legal cases and developments which relate to marital rape in India that has also shaped the future course and legal understanding of the issue.

**A few notable cases related to marital rape in India are as follows:**

**Independent Thought v Union of India Anr:**<sup>1</sup> This case challenged the exception ambit of marital under Section 375 of IPC<sup>2</sup> which states sexual intercourse between a husband and his wife of less than 18 years is valid and not rape. However, SC held that sexual intimacy with a minor of 15-18 years of age is still held as rape even if the minor is your wife under the Protection of Children from Sexual Offences (POSCO) Act 2012<sup>3</sup> even if the husband is not guilty within the ambits of IPC. This case though directly didn't address the core issue of marital rape in India, it surely brought attention to the issue of sexual assaults & harassment within marriages.

**Bhupinder Singh v Union of India:** In the following, the esteemed Delhi High Court observed that forced sexual encounters by a husband with his spouse against her will, could amount to marital rape under certain situations. High Court also highlighted a major fact that marriage between couples doesn't grant them implied consent for sexual encounters and that it's high time society starts respecting women's autonomy and body integrity.

**Kharak Singh v State of Uttar Pradesh:**<sup>4</sup> Although Kharak Singh v State of UP predates debates on marital rape, it has significance in the establishment of the right to privacy as a fundamental right under the Art 21 of the Indian Constitution<sup>5</sup>. The right to privacy is involved in different arguments related to marital autonomy, consent norms and a need for legal protections against marital rape as a criminal offence.

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<sup>1</sup> *Independent Thought v Union of India and Anr* AIR 2017 SC 4904

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

<sup>3</sup> Protection of Children from Sexual Offences Act 2012

<sup>4</sup> *Kharak Singh v State of Uttar Pradesh* AIR 1963 SC 1295

<sup>5</sup> Constitution of India 1950, art 21

**Sakshi v Union of India:**<sup>6</sup> The following case addressed the issue of sexual assault and violence against women, which included marital relationships & intimate partnerships. Though not addressing the issue of marital rape directly, it contributed to the broader legal system for addressing gender-based harassment, assaults, violence and discrimination.

**Justice K.S. Puttaswamy (Retd.) v Union of India:**<sup>7</sup> Popularly known as the ‘Right to Privacy’ case, this landmark case law judgement by the esteemed Supreme Court of India strongly stated that the right to privacy is a fundamental right, which has implications for issues related to bodily autonomy, sexual rights and protection of people from unwanted sexual encounters, including those of marital relationships.

**RIT Foundation v Union of India:**<sup>8</sup> This a landmark case concerning the exception given as a loophole in Section 375 of IPC<sup>9</sup>. The main issue was exempted sexual intercourse by any husband with his wife from the definition of rape. These provisions create legal loopholes. The Delhi HC gave a split verdict on May 22 where Justice Rajiv Shakdher declared the exemption violative and highlighted its discriminatory nature but Justice C. Hari Shankar held that the exception was valid and marital relations holds implicit needs of sexual encounters.

## RECOMMENDATIONS

**Legislative Reforms:** It's high time that the law should without any hesitation continuously advocate for legal reforms to criminalize marital rape. The law should state marital rape as a criminal offence and its perpetrators should be held accountable.

**Training for Law Officials & Judiciary:** Law officials should be provided separate training for handling marital rape cases effectively and efficiently.

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<sup>6</sup> *Sakshi v Union of India* (2004) Supp (2) SCR 723

<sup>7</sup> *Justice K.S. Puttaswamy (Retd.) v Union of India* (2018) SC (Supp) 1841

<sup>8</sup> *RIT Foundation v Union of India* (2022) SCC Online Del 1404

<sup>9</sup> Indian Penal Code 1860, s 375

**Education & Awareness:** It's a need of the hour that the students being the young youth of the country should be made aware of the harmful effects of marital rape. Schools, colleges and other educational institutions should be targeted to raise awareness.

**Marital Rape Victim Support Services:** A different body concerned to handle the issues related to marital rape should be enhanced which includes medical care, counselling and legal help.

**International Cooperation:** The issue should be addressed internationally which includes taking best practices from other countries to tackle the issue. Learn from their strategies and apply them locally.

## CONCLUSION

In conclusion, marital rape is an act of non-consensual sexual intercourse within the ambit of marriage which is historically been a complex issue in legal, social & cultural ambits worldwide. It's a form of sexual assault within intimate partnerships that often goes unnoticed and is surrounded by misconceptions & stigma.

Over the years there have been various important legal interventions aimed at fighting & addressing marital rape as a criminal offence, with various degrees of success & challenges.

In various parts of the world including western countries, marital rape wasn't criminalized until recently there has been awareness and voices against the sexual offences committed within marriages and intimate partnerships. The orthodox prevailing notion of marriage as an implied consent to the sexual encounters committed by the spouses and intimate partners has hindered the recognition of marital rape as a felony offence. The actual idea of your spouse being a perpetrator of sexual harassment against their partner was often considered absurd and was usually dismissed or ignored. This attitude reflected the orthodox societal norms regarding gender roles, dynamics of marriage, and autonomy of individuals within intimate partnerships.

A key milestone in addressing marital rape was its recognition as a crime separate from all other sexual offences. This shift or air in the legal world addressed that the marriage is not ultimate

consent to all forms of activities done and spouses do have their bodily autonomy & integrity regardless of their marital status or relationship status.