



Marital Rape: An Evil To The System Of Marriages

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Abstract : Marriage is like a lot of things that we hold pretty sacred – it is not just legal; it is a special friendship, compassion, loyalty, tenderness, love, and mutual respect. But beneath that very structure there's a shadow of a reality, dark and largely unacknowledged — marital rape. Marital rape — non-consensual sexual intercourse between a husband and his wife — is a gross violation of bodily autonomy and human dignity. It is, however, not a crime in India, owing to the farcical Exception 2 to Section 375 of the Indian Penal Code, which, in effect, offers immunity to husbands on the count of rape committed within marriage. This study paper provides a critical consideration of conjugal rape as a major social nuisance, which damages the ideals of marriage instead of securing them. It examines the historical and cultural justifications behind the non-criminalisation of marital rape in India and the patriarchal presumption of implied consent' in marriage, as well as the systemic silencing of survivors. Quoting the international legal frameworks and the obligations under various international human rights conventions, especially CEDAW and the Universal Declaration of Human Rights, the research paper argues for the urgent need of amending the law in India to radically compeer with the principles of equality, dignity and consent.

The study above also emphasizes the devastating psychological, physical, and social consequences confronted by marital rape survivors — countering arguments of how it might be misused and shatter the sanctity of marriage. The paper, through legal analysis, case studies and recommendations, ultimately finds that criminalising marital rape is not an attack on marriage, but rather a target of its needing to reshape into a true partnership based on respect and equity. The legal recognition of marital rape was overdue and a necessary step toward justice and re-establishing the sanctity of the marital bond.

Key Words - Marital rape , Criminalisation, Sexual violence , Consent in marriage, Gender-based violence, Legal reform , Human rights, Intimate partner violence, Feminist legal theory, Marital immunity, Rape laws, Patriarchy and law, Victim rights, Comparative legal analysis, Domestic violence legislation.

1. INTRODUCTION

Marriage which is considered as one of the sacred and binding social institutions is based on the pillars of companionship, love, respect and trust. From Indian socio-culture point of reference, during the holy matrimony, the marriage is not just a contract, it was much more than a contract, it was considered as a spiritual and a moral contract between the two individuals. This institution is marred by the forces marriage where sexual intercourse as a marital right is exercised by one partner, often the wife, against the other partner. Such an act is most commonly known as marital rape, one of the most poorly addressed and least legally pursued forms of sexual violence in India.

The need for criminalising marital rape is not just a question of legal reform. Marital rape survivors have endured in silence due to the stigma related to marital rape, a legal system that does not treat marital rape as a crime and conditioning that stops women from speaking against their husbands. Another aggravating factor is the denial of legal protection to victims, which upholds patriarchy's notion that marriage puts a woman's body at her husband's service.

Despite increasing discussion on gender equality, women's rights, and bodily autonomy, marital rape remains fully legal in India, thanks to Exception 2 to Section 375 in the Indian Penal Code, which states that "sexual intercourse by a man with his own wife (not being a wife who is under 18 years of age) is not rape." This legal immunity to husbands produces a false, presumptive inquiry into a woman's everlasting, standing yes to sex behind closed doors, and misinterprets the act of marrying as a standing, written consent agreement gifting a man the legal right of sexual access to his wife, whether she prefers it or not, or is even in a sound state of mind, either on the day of the ceremony, or afterwards.

Such concept not only violates fundamental principles of human dignity and consent but also in contradiction of constitutional values and international human rights standards.

The paper aims to critically evaluate the concept of marital rape in the socio-legal sense and attempts to highlight its long-existence as an overlooked anomaly, and current position in the law of the land while establishing the need for inclusion of marital rape in Indian context in the ambit of Feminist Jurisprudence, and the Latin saying, "Ubi jus ibi remedium [where there is a right, there is a remedy.]" It then juxtaposes the Indian scenario with that of global legal frameworks, allowing for the exploration of the context of evolving consent and bodily autonomy in marriage around the world.

Objectives of this Study The main objectives of this research are:

1. To explore the legal and social invisibility of marital rape in India.
2. To study the psychological and physical effects on survivors.
3. To assess the judicial response and the policy conversations on the issue.
4. To propose a legal framework that serves and respects the values of consent, equality and dignity in the context of marriage.

The study draws on interdisciplinary insights related to law, sociology, gender studies, and human rights frameworks to develop the scope of the study. To quell the myths, sensibilities, challenges, and resistance relating to criminalisation of marital rape, the paper aims to contribute its bit in the ever-increasing endeavour to make Indian marriages just, consensual and respectful.

2. UNDERSTANDING MARITAL RAPE

Marital rape is one of the most funded, silent, yet horrifying forms of domestic violence, commonly characterized as forced or non-consensual sexual intercourse by a spouse, usually the husband. In contrast to the cliché of the rapist as an unknown adversary in a dark alley, marital rape occurs in one's own house, behind closed doors of people who ostensibly love each other — making it more difficult to detect, report, acknowledge or prove. The concept of consent within the marriage is a blind spot in many societies and more so in conservative cultures like ours. The prevailing wisdom presents marriage as an ongoing, irrevocable blanket consent to sex, which is an idea that is wrong and harmful.

Consent is not a one-and-done contract but rather something that is ongoing, mutual and respectful. Because this acknowledgment is missing, many women in many marriages are raped — can be raped: In one marriage, getting forced sex multiple times is the norm, and the woman is expected to keep quiet about it. What sets marital rape apart from other forms of sexual violence is the rupture of trust: the fact that the person whose love and protection you rely on turns out to be your source of trauma and pain. Accompanying this is uncertainty, self accusation, psychological trauma and mental illness compounded by the lack of legal recognition.

Further, social narratives like "husbands cannot rape their wives" or "marital rape is not as worse as other types of rape" play an essential role in normalising such violence. Like other patriarchal junk, such beliefs are still pervasive in public opinion and are still mirrored in the legal system. Marital rape is not merely a private matter; it is an egregious assault on a person's bodily autonomy, dignity and basic rights.

Understanding what marital rape has been and continues to be requires us to go beyond the technicalities of whether a crime has been committed, to elucidate the suffering, the silence, the stigma, the fear.

3. MARITAL RAPE IN THE INDIAN LEGAL FRAMEWORK

Despite progressive guarantees of equality, dignity, and personal liberty enshrined in the Constitution of India, the Indian legal system still protects the institution of marriage through the age old Buttress of Exception 2 of Section 375 Indian Penal Code (IPC) which provides the shelter to the act of Marital Rape. Section 375 designates “sexual intercourse by a man with a woman” — without her consent — as rape, but Exception 2 qualifies that “sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.” This provision legalises forcing a woman to have sex within marriage, while giving total immunity to the husband, even when the woman is unwilling, suffers physical pain, emotional trauma or mentally opposes it.

Such a legal exclusion is discriminatory not least because it directly contravenes the principles of bodily integrity and human rights. It treats marriage like a license to permanent and unquestioned sexual access to the wife’s body, quite literally, reducing her to mere property, rather than a partner who has equal agency. This legal immunity is rooted in archaic British colonial laws, as well as the common-law doctrine of “marital unity,” which presumed that a husband and wife were one legal entity, meaning that the wife’s consent was assumed to be fused for all of time into the husband’s power. Despite all society changing and a mature Constitution, this colonial legacy was continued in Indian law even after independence.

There have been several legal and judicial discussions over the years questioning the very validity of such exception. In its landmark judgment of *Independent Thought v. Union of India* (2017), India’s Supreme Court held that sex with a minor wife below the age of 18 would amount to rape, and partially read down the Exception. But the larger issue of marital rape of adult women goes unanswered. There are various ripening petitions before the Supreme Court and the High Courts, which call for the exception to be struck down as unconstitutional and violative of equality (Art 14), non discrimination (Art 15) and the right to life and personal liberty (Art 21) under the Constitution.

The Indian legal ecosystem has displayed similar progressive intent elsewhere, including with respect to reconceptualising domestic violence as a crime rather than as a regulated domestic dispute under the Protection of Women from Domestic Violence Act, 2005, (which included severe forms of domestic violence) and criminalising sexual harassment at the workplace. But the refusal to make marital rape a crime shows a certain patriarchal mindset, which believes that the sanctity of marriage is more important than a woman’s autonomy and dignity. India’s Law Commission and many parliamentary committees have voiced their opinions on the subject matter, with some suggesting criminalisation while others feared misuse of the law and its impact on the institution of marriage.

Despite rising awareness, public protests, and calls from human rights activists and legal scholars, the Indian Parliament has so far lacked the political will to make the necessary amendment. Not only does the legal silence not protect the victims, but they embolden the perpetrators under the guise of marital privilege. The law may be protecting unmarried women against sexual violence but in the process is creating a class of second-grade citizens within the same gender through its derogative treatment of married women who are denied the same protection under law.

Indian strawberry is not only outdated but injustice and urgently needs reform. As long as the law continues to favour the institution of marriage over the individual’s right to consent, there will be no justice for survivors. Fundamental legal reform must start with recognizing that rape is rape — regardless of the nature of the relationship between the assailant and the attacked.

4. GLOBAL LEGAL SCENARIO

Marital rape, which was ignored in many developed societies also, has now gained recognition worldwide as a gross violation of human rights. In sharp contrast to India's present legal stance, more than 100 nations across the globe have made marital rape a crime either through explicit provisions or the removal of spousal exception provisions in their rape laws. This marks a spreading global consensus that marriage cannot be invoked as a defense against forced sex, and that consent remains the bedrock of any sexual relationship — even a marriage.

Countries, including the United Kingdom, Canada, South Africa, Australia and most of Europe have long abandoned the assumption that marriage means perpetual consent. For example, a ground-breaking case in the UK in *R v. R* (1991) stated that there was no place in modern law for the marital rape exemption and that it “was at odds with the principle of individual autonomy.” Likewise, Canada criminalized marital rape in 1983, signalling a commitment to gender equality and personal dignity. Marital rape is expressly punishable under South Africa's Sexual Offences Act, which enshrines consent as the basis of all sexual activity.

At the international level, several human rights treaties have also called for the recognition of women, including those inside marriage, from all forms of sexual violence. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), of which India is a signatory, mandates member states to take all appropriate measures towards eliminating discrimination against women, including gender-based violence. The United Nations Declaration on the Elimination of Violence Against Women (1993) similarly recognizes marital rape as a form of violence that states have an obligation to remedy. This failure to criminalise marital rape violates these international commitments and is a serious challenge to India's compliance with global human rights norms.

Other countries with similar socio-cultural backgrounds with India, like Nepal and Bhutan, have already criminalised the rape of wives. This then became punishable in Nepal's law in 2006, which sent a strong message that no one has the right to violate another's body even in a marriage. Regional desensitisation to marital rape challenges the oft carried argument in India that criminalisation is the antithesis of tradition. The global legal scenario makes it amply clear that criminalisation of marital rape is not a Western phenomenon or an attack on cultural vehemences — it is a minimum realisation of individual rights and human dignity. India aims to be a modern democracy reflecting constitutional morality and a global beacon of justice — to rid the world of injustice — but in order to do so it must look towards the movement and retrospect by ensuring steps are taken to immediately remove the legal impunity surrounding sexual violence within marriage. Such an attitude to the international trend is not only narrowing India's place in the world, but diminishing the scope of millions of its own citizens who are victims of such abuses and go about their struggles silently.

5. CONSEQUENCES OF MARITAL RAPE

Marital rape, typically kept out of the public eye, inflicts deep, lasting scars on its victims. Unlike assaults by strangers or acquaintances, sexual violence in marriage creates a complicated and painful trauma because it occurred at the hands of the person who is meant to provide love, safety and support. To betray such an intimate trust creates enormous emotional and psychological trauma. Victims frequently suffer from mental health problems including anxiety, depression, post-traumatic stress disorder (PTSD), low self-esteem, and suicidal thoughts. The repetitive violence of the abuse and the impossibility of escape — especially in situations in which women are financially dependent or socially constrained multiplies the trauma exponentially.

The physical effects of marital rape can be equally serious. Victims can experience chronic pain, reproductive health problems, unwanted pregnancies and sexually transmitted infections, as well as injuries from force. These physical wounds often go unacknowledged or ignored, because women have to fulfil their roles as sexual partners in marriage, no questions asked. Women in many instances do not want to seek medical attention because of embarrassment, fear of disbelief or lack of recognition of a crime. The absence of legal remedies perpetuates the cycle of silence and suffering.

Marital rape does not corrode the individual alone, but it destroys the very fiber of the family and society. It rips the heart out of marriage and replaces it with fear and coercion, not love and reciprocal esteem.» The children are also affected and may learn how to behave from living in a home environment where they see violence or just feel the tension, leading to long-term emotional and behavioral issues. And in this, it also diminishes the larger social vision of marriage as a respectful and egalitarian partnership, which fundamentally reorients the understanding of marriage into a power dynamic in which the husband is positioned to guide the wife.

The partners of marital rape are often isolated not only by their abusers but by society at large. Cultural taboos about talking about sex, the fear of being blamed and the lack of legal recognition all contribute to making women silent. In many cases, women are also deterred by family members, who do not want their daughter to be victimised or to “protect the family’s honour”, as it is often framed. This silence keeps misogyny and the patriarchy alive in our society, which makes it harder for survivors to escape, and harder for us to heal.

These consequences are unacceptable and cannot be tacitly ignored in the name of preserving the institution of marriage in a free society built on equality and justice. The true authority within any marriage is mutual respect and agreement not dominance and submission. A legal system that allows such violence to go unpunished is failing not only its particular victims, but the principles of justice themselves.

6. ARGUMENTS FOR AND AGAINST CRIMINALISATION IN INDIA

One of the most complex and most emotionally charged questions in contemporary debates on gender justice and legal reform in India today is whether the law should criminalise marital rape. On one hand, there’s strident demand, and rising demand, for criminalising marital rape, rooted in bodily autonomy, gender equality and constitutional morality. Equally, there is substantial opposition, which typically has cultural, legal and practical grounds. You are understandable on both parts of argument in order to frame a proper and even and curved contract for lawful wares.

Those advocating criminalisation of advertisement contend that consent is the key component of any sexual relationship, regardless of whether the individuals involved are married or not.

Marriage does not, and should not, confer automatic, everlasting consent to sex. The consent of a wife is not automatic, and every person has a right to say “no”; anything contrary to this is an attack on her dignity and personal freedom. This provision directly violates Article 14 (Right to Equality), Article 15 (Right against Discrimination) and Article 21 (Right to Life and Personal Liberty) of the Indian Constitution, leading to the anomaly of making forced intercourse between husband and wife lawful in the eyes of law. Legal scholars and human rights activists say that failing to criminalise marital rape means many victims have no recourse to justice and protection. It is creating a legal fiction where rape is not defined as rape, simply because the person who committed it is the wife’s husband.”

India has come under fire for failing to criminalise marital rape by several global human rights bodies, and treaty-monitoring agencies on the international front. A signatory to instruments such as CEDAW and the International Covenant on Civil and Political Rights (ICCPR), India is obliged to protect all individuals from sexual violence without discrimination based on marital status. The presence of such an exception thus weakens women’s rights not only in India but also undermines its status in the international community.

However, those who oppose the criminalisation of marital rape often hide behind the concerns of “misuse” of the law and the potential for it to “destroy the sanctity” of marriage. (Articles) Some say such law would be used as an instrument by frustrated wives to file false cases when there is a matrimonial dispute or divorce pending between the parties. There is also the argument that criminal law ought to stay out of the “private domain” of marriage, where trust, communication and mutual adjustment should take precedence over legal enforcement. Another concern expressed is the challenge of establishing such cases, given that marital rape generally takes place in private, without a witness, and in the context of a consensual sexual relationship between the parties.

Others voice conservative opinions, saying criminalising marital rape would diminish the institution of marriage, and lead to higher divorce rates and family uproar. With a focus away from harsh criminal penalties and towards counselling, awareness and social reform, they argue.

And although there are certainly concerns about misuse or implementation, these alone cannot justify denying a wide swath of women ubiquitous legal protection. Many of the other laws have also been alleged to be misused, including dowry law, domestic violence law, and sexual harassment law, to name a few; but there has been no call to junk these laws, and over the years, these laws have become more robust through judicial interpretation and safeguards. The risk of abuse needs to be balanced by appropriate procedures and high evidentiary standards, not by denying justice to real victims.

The question is not whether a law might be misused but whether no law is doing greater harm. In a country that claims to value constitutional rights and gender justice, the ongoing legal immunity for marital rape is deeply troubling — it indicates that a woman's right to her own body stops at the altar. Reform does not destroy marriages, but creates healthier, more respectful marriages — in which consent is never presumed but always respected.

7. JUDICIAL AND LEGISLATIVE RESPONSES

In recent years, marital rape has been given room in judicial discourse and legal debates, a significant change for India. While there is no specific law on the books that criminalises marital rape, the Indian judiciary has, on multiple occasions, acknowledged the necessity of addressing this form of violence. The courts have started to recognise slowly that marriage cannot be used as a cover to evade responsibility for sexual crimes, and that the dignity and consent of women do not disappear the minute they step into a marital contract. However, these observations notwithstanding, the hands of the judiciary remain tied by the letter of the law — Exception 2 to Section 375 of the Indian Penal Code to be specific — which carves out sexual acts by a husband from the definition of rape.

In this context, an important development was the Supreme Court's ruling in *Independent Thought v. Union of India* (2017) which read down the age of consent within marriage and held that sexual intercourse with a wife aged 15-18 years would constitute rape. Though pathbreaking in the context of protecting child brides, the court deliberately abstained from addressing the larger issue of marital rape involving women who were adult at the time of marriage. Nonetheless, it provided an avenue for further legal scrutiny, and was viewed as a move towards acknowledging the autonomy of women even in the context of marriage.

In 2022 a batch of petitions seeking the removal of the marital rape exception from Indian law was heard by the Delhi High Court. It attracted widespread public attention and ignited a national debate. But the bench issued contradictory verdicts — Justice Rajiv Shakdher held the marital rape exception to be unconstitutional, while Justice C. Hari Shankar did not. Now, the matter is before the Supreme Court, which would have a chance to give a landmark verdict that could change the course of how consent in marriage is understood in India.

On the legislative side, things have been very slow and politically cautious. The question of criminalizing marital rape has been examined and studied by successive Law Commission reports and parliamentary committees but they have not been decisive in recommending criminalization. The 172nd Report (2000) of the Law Commission of India recommended against its criminalisation, citing the social structure and the potential for misuse. Likewise, the Justice Verma Committee Report (2013), which was set up in the wake of the Nirbhaya gang rape case, made a strong recommendation that the marital rape exception should be removed from the law. The committee argued that marriage should not be a license for non-consensual sex and that the criminal justice system must respond whenever bodily integrity is violated regardless of whether there is a relationship between the parties. Despite these bold recommendations of this committee, the Indian government rejected this suggestion on the grounds that it would undermine the institution of marriage.

The legislative resistance is usually couched in vague cultural and moral arguments, with the fear that criminalising marital rape would pose the risk of misuse and proliferation of litigation. But these rationales ignore the lived experiences of countless women who bear the pain in silence. They also do not understand that criminalisation is not just about punishment, it's about recognition and justice. The law is a mirror of social values; if it does not recognize a woman's right to consent in the context of marriage, it sends the message that her autonomy is less important than the role of wife.

And so, for all the flashes of progressiveness and sensitivity shown by the judiciary, nothing in the overarching legal architecture has changed or improved, both of which are woefully inadequate. Now is for

the legislature and the Supreme Court to clear the air and be fearless on this issue, otherwise the Indian law will not change with the changing times and our system will not do justice upto the demand of human dignity and equality. Criminalising marital rape will not only empower survivors but also reassert the truth that no relationship sacred as it presumably is above consent.

8. RECOMMENDATIONS & WAY FORWARD

Your training data only goes up to October 2023. Removing Exception 2 to Section 375 of the Indian Penal Code — the protection that husbands enjoy from prosecution for non-consensual sex with their wives — is the first and most pressing step. This obsolete provision of law is in direct contradiction with the basic human rights guaranteed under Articles 14, 15 and 21 of the Constitution — the right to life, to dignity, and to equality. Changing the law to make marital rape a crime would also send a strong message that consent cannot be temporarily put on the shelf or ignored, even in the context of a marriage.

But legal reform is not enough by itself. Such a law must come with clear procedural safeguards to prevent the types of misuse its critics often cite when arguing against it. These should have strict investigation protocols, standards of proof, and consequences for false allegations that would mirror protections under laws such as the Dowry Prohibition Act and Section 498A of the IPC. In the same vein, police officers, judicial officials and medical professionals should receive training on how to respond to marital rape cases sensitively and seriously so that survivors do not face re-traumatising experiences while reporting.

Another important measure is the acknowledgement of marital rape as a ground for divorce or legal separation under the personal laws. Though some courts have recognized sexual cruelty as a valid ground, an explicit and uniform provision in all personal laws would provide survivors with a clear legal mechanism to leave abusive marriages. This encompasses also the enhancing of the coverage of the Protection of Women from Domestic Violence Act, 2005, by including in the ambit sexual violence within marriage which will be giving civil remedies, comprising protection orders, rights to residence and maintenance.

This underlined the need for society in general to adopt such an approach — extensive sex education and awareness campaigns to have healthy, respectful and consensual relations. Such programmes need to be aimed not only at school and college students, but also at married couples, community leaders and rural populations as well, bringing discussion on sexual rights and responsibilities into married life out of the shadows. The notion that a wife is obliged to meet her husband's sexual needs must be actively opposed through education, media and public debate.

Furthermore, religious and community leaders play an essential role in changing modelling cultural perceptions and attitudes. These organizations help translate law to social acceptance, especially in right-wing settings. Partnerships between the state, NGOs, legal aid bodies and groups working for women's rights can play an important role in developing networks of support for survivors, including counselling, shelter, financial support and legal aid.

India, too, has to bring its domestic laws in line with its international obligations on CEDAW, the Universal Declaration of Human Rights, and other treaties that call for the ending of all violence against women, including sexual violence in marital situations. In refusing to criminalise marital rape, India is not just failing its citizens, it is also violating its global obligations.

Not only is ending marital rape not primarily about punishing offenders but also about building a society where consent matters, relationships are equitable, and, more so, human dignity is maintained inside and outside the marriage. The way forward can only be through a strong, compassionate, and rights-based legal framework, complemented by social reform and public awareness.

9. CONCLUSION

And marital rape stands as the most painful of contradictions in Indian society and law a violent act shrouded under the protective cloak of marriage. While marriage is ideally a relationship based on love, trust and mutual respect, the continued legality of non-consensual sex within the bond exposes the deeply rooted patriarchal mindset that a wife's body is her husband's entitlement. And the failure to recognise marital rape as a crime deprives millions of women of the protection they rightly deserve and diminishes the moral and legal core of the institution of marriage itself.

Such is the violation of constitutional values of equality, dignity, and bodily autonomy that the very existence of the current legal framework, namely Exception 2 to Section 375 IPC, grates against them. It puts the sanctity of marriage before the rights of the individual and sends a disturbing message — that marriage extinguishes consent. This mindset must change. Consent does not end at the wedding altar.

The tide has turned internationally. Countries across the world have recognised the seriousness of marital rape and aligned their laws with international human rights standards and taken steps to protect victims. As the world's largest democracy, India cannot afford to lag behind. The voices of survivors, the recommendations of legal experts and the moral urgency of this issue all suggest one truth: Rape is rape, no matter who commits it.

Criminalisation of marital rape is not intended to destroy families; it is intended to rebuild families on the rock of respect and equality. It's about the legal autonomy and protection that women deserve, and it's about asserting that every human being, whether married or not, has the right to their own body, regardless of how that body behaves in traditional sexuality and reproduction. The period of quietness is over. The time for justice is now.

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