

INTRODUCTION

Marital rape, or non-consensual sex between a husband and wife, is unfortunately a common form of sexual violence that often goes unaddressed. Though exact statistics are unknown, studies suggest a significant percentage of married women in India have experienced forced sex from their husbands.

However, under Indian law, marital rape is not considered a criminal offense. Section 375¹ of the Indian Penal Code has a specific exception stating that sexual intercourse between a man and his own wife over the age of 15 does not constitute rape. This exception is based on the outdated notion that a woman relinquishes her right to refuse sex after marriage.

By excluding marital rape from the legal definition of rape, Indian law denies married women protection from sexual violence. The injustice of this exception violates principles of human rights and equality. It essentially sanctions men's freedom to force unwanted sexual relations upon their wives.

The physical and psychological impacts of marital rape can be severe and long-lasting. Victims often suffer repeated assaults, betrayal of intimacy, injuries, fear, humiliation, and loss of self-worth. Yet many feel compelled to remain in abusive marriages due to fear, diminished self-esteem, and the false hope their partner will reform.

¹ Section 375 of the Indian Penal Code defines rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 18 years of age."

Advocates argue that marital rape should be recognized as a crime in India, like other forms of domestic violence under the 2005 Domestic Violence Act. Removing the marital rape exception from the legal definition of rape is vital to protecting married women's autonomy over their own bodies and lives. Though progress is slow, the movement to criminalize marital rape in India continues.

Types of Marital Rape

Marital rape can be categorized into three primary types based on the circumstances and level of force involved.

Force-Only Rape

This type involves the husband employing just enough violence or threats to coerce the wife into having sex in order to assert his dominance and control over her. Force-only rape may occur in relationships where other overt physical or verbal abuse is less common. The husband uses the minimum force required to make his wife submit to the unwanted sexual acts. For example, he may restrain her movements, use intimidating verbal threats, or apply just enough physical force to overpower her objections. This serves to establish his authority over her body against her will. Force-only rape is often rooted in the husband's desire to reinforce traditional gender roles and his perceived right to sexual access to his wife. It may also result from anger, hostility, or frustration in the relationship.

Battering Rape

Battering rape, the most common type, combines severe physical abuse alongside the sexual violence. Here the husband brutally beats his wife before, during, or after raping her as another means to do harm.

Battering rapes often involve closed-fist punches, slaps, choking, and other forms of violent battery as well as degrading verbal abuse. The rape essentially becomes an extension of the physical attack as another weapon to terrorize the victim. The bruising, cuts, broken bones and other injuries inflicted typically require medical treatment. Battering rape serves to not only dominate the wife sexually but also punish and terrorize her through escalated physical violence.

Obsessive/Sadistic Rape

Obsessive or sadistic rape involves cruel sexual torture, often including bizarre behaviours, weapons, or humiliation tactics. This type satisfies the husband's twisted cravings to inflict pain, terror, and absolute domination over the victim. He may use objects, physically beat or cut the victim, or engage in degrading acts like urinating or defecating on his wife to fulfil sadistic urges. The ongoing fear, pain and humiliation often lead to severe and long-lasting psychological trauma in the victim. Obsessive rape uses deliberately terrorizing violence as a means to satisfy the perpetrator's cravings for control and inflicting suffering. This is widely regarded as the most horrific and traumatic type of marital rape.

Reasons for Marital Rape

There are several factors that contribute to the occurrence of marital rape globally, including:

1. Misconceptions about consent

The false belief that marriage inherently implies permanent consent to sex. However, consent must be voluntarily given for each sexual act.

2. Power dynamics

Imbalances in marriages where one partner dominates the other makes it difficult for the victim to refuse unwanted sexual approaches.

3. Lack of education

Inadequate understanding and awareness of sexual consent rights can lead to marital rape when partners lack knowledge of boundaries.

4. Societal and cultural norms

Social norms that emphasize traditional gender roles and male authority in marriages implicitly condone marital rape.

5. Absence of legal recognition

When marital rape is not legally prohibited and punishable, it allows the violation to continue without consequences.

Overall, promoting consent education, egalitarian relationships, and strong legal protections for married partners is critical to addressing the social, cultural, and legal factors enabling the prevalence of marital rape.

Status of Marital Rape in India

Marital rape, or non-consensual intercourse between a husband and wife, remains a deeply concerning issue in India. Of 185 countries globally, India is among only 34 that has criminalized this violation within marriage. However, marital rape is still only considered illegal under civil law, not criminal law.

Under Section 375 of the Indian Penal Code, forced sex by a man with his own wife over age 15 does not constitute rape. This provision essentially deprives wives of autonomy over their own bodies and consent. It is an archaic and unjust clause needing reform. Laws sanctioning such violation on grounds that "a woman is man's property" require modernizing to reflect principles of human rights and gender equality.

Shockingly, despite most industrialized nations criminalizing marital rape, India still lacks legal protections for married women against it. Complex factors like high illiteracy rates, pervasive poverty, religious beliefs, and the cultural sanctity of marriage help perpetuate marital rape in India. Marriage is seen as conferring a husband's permanent sexual rights over his wife, increasing his ownership over her body and denying her control even over her own sexual and reproductive choices.

Recognizing marital rape as a crime would acknowledge that society and the state should not condone sexual coercion of women merely because it occurs within a marriage. For women to regain authority over their lives, they must be able to refuse their husband's demands without fear of consequences. Outdated notions of "wifely duty" and "conjugal rights" must be dissolved, since married sex, like all sex, must involve mutual willing participation for pleasure.

Currently, women's best legal recourse against marital rape is filing a complaint of minor cruelty against their spouse, punishable by up to 3 years jail time or a fine. Under domestic violence laws, women can also potentially obtain protection orders in more extreme cases.

Some argue that the Western concept of marital rape cannot apply appropriately to India due to various social, cultural and religious factors. However, activists emphasize that women universally deserve autonomy over their bodies and ability to refuse forced sex, even within marriage. Continued advocacy is required to enact comprehensive laws criminalizing marital rape in India, supporting survivors, and shifting societal attitudes.

In May 2022, the Delhi High Court delivered a split verdict on criminalising marital rape in the country. Justice Rajiv Shakdher struck down the existing law as unconstitutional, stating that the right to withdraw consent forms the core of women's right to life and liberty. Justice C. Harishanker rejected the plea to criminalise marital rape, noting that the legislature must carry out the change in the law since the issue “requires consideration of various aspects including social, cultural and legal.” The case will now be heard by a constitutional bench of the Supreme Court comprising Chief Justice D.Y. Chandrachud , Justice P.S. Narasimha, and Justice J.B. Pardiwala.

Laws relating to Marital Rape in India

In India, Section 375 of the Criminal Law (Amendment) Bill, 2013² serves as the primary legislation defining and penalizing sexual offenses. This anti-rape law delineates specific acts that constitute rape under the legal code. However, it contains an exception that marital rape, or non-consensual intercourse between a husband and wife, does not qualify as rape under this definition. Thus, despite criminalizing other forms of sexual violence, Indian law still grants immunity for marital rape.

² The Criminal Law (Amendment) Act, 2013 was passed in the aftermath of the Nirbhaya case. The Act also amended the already existing offenses to make them more stringent. Notably, the definition of rape in Section 375 was broadened to include acts in addition to penetration.

Many social activists and NGOs have taken up the cause of assisting women suffering marital rape in navigating potential recourse. They often advise these women to seek civil remedies under the Domestic Violence Act of 2005³, which encompasses physical and emotional abuse within marriage. However, the criminalization of marital rape itself as a serious crime on par with other types of rape continues to be unsuccessful in India.

Historically, the 42nd Law Commission Report⁴ in 1971 rejected recommendations to criminalize a husband having sexual relations with his underage wife. Their reasoning was that sex is an inherent component of marriage regardless of the wife's age and consent. It was not until 1983 that forced intercourse with a legally separated wife was finally criminalized under the added provision of Section 376A in the Indian Penal Code (IPC). This marked the first exception to absolute impunity for marital rape.

The most progress came with the 2005 Domestic Violence Act, under which marital rape can be prosecuted as a civil offense allowing remedies like protection orders against abusive spouses. When the Act was being debated in Parliament in 2005, MP Kanti Singh acknowledged that its definition of domestic violence encompasses “all acts of gender-based physical and psychological abuse...including marital rape.” She argued the 2005 law would provide some increased recourse for victims given the socio-historical context, though still fell short of full criminalization.

³ The Act ensures woman’s right to reside in her matrimonial home. This Act has a special feature with specific provisions under law which provides protection to a woman to „live in violence free home.

⁴ the Law Commission rejected an argument that there was no reason for rape alone to be shielded when other instances of violence by a husband towards a wife were criminalised. It expressed concern that criminalisation of marital rape would lead to “excessive interference with the institution of marriage.”

Legal experts contend that civil remedies alone are insufficient, and marital rape must be recognized as a criminal offense on par with other forms of rape. The fight continues to overturn the marital rape immunity in Indian criminal law, but the deeply patriarchal society poses barriers. Until marital rape is criminalized, married women will remain unprotected from sexual violence granted to husbands through this legal exception rooted in traditional gender inequities.

Criminal Law Aspect:

The Indian Penal Code (IPC) has a comprehensive definition of rape as a criminal offense under Section 375. It defines the various circumstances and acts that constitute rape, including sexual activity against a woman's will, without her consent, under false pretences, when she is unable to understand the nature of the act, when she is unconscious or intoxicated, and when she is under 16 years of age.

This definition seeks to protect women's sexual autonomy and right to refuse unwanted sexual acts across a wide range of situations involving coercion, deceit, incapacitation or age-based inability to genuinely consent. However, Section 375 contains a controversial exception clause stating that forced intercourse between a husband and wife does not qualify as rape under the law, provided the wife is over 15 years old.

This marital rape exemption stems from the outdated and patriarchal premise that married women consent to unlimited sexual availability and relinquish their right to refuse sex from their husbands after marriage. It legalizes non-consensual intercourse in a marital relationship once the wife is past 15 years of age. This implies a husband essentially has

unfettered sexual access, control and domination over his wife's body regardless of her desire or will.

It was not until 1983, over a century after the IPC was enacted, that an amendment introduced Section 376A⁵ recognizing forced sex with a judicially separated wife as a punishable offense. This marked the first qualification of absolute impunity for marital rape in India. However, Section 376A provided only a maximum punishment of 2 years imprisonment for raping a legally separated wife. The amendment still did not acknowledge rape within an intact marital relationship as a crime.

The IPC also recognizes rape of a wife between 12-15 years by her husband as a lesser offense than other forms of rape, punishable by only a fine or a maximum 2 years imprisonment. Once past 15 years of age, married women have no legal recourse whatsoever against sexual violence inflicted by their husbands. They are denied basic protections or rights over their own bodies and sexuality within their marriages.

Rape is considered a grave criminal offense under Indian law unless it occurs within the context of marriage. The marital rape exemption in the IPC continues to deny married women autonomy, dignity and consent rights within intimate relationships. Advocates for gender justice and women's rights argue this inequity must be overturned to punish and deter sexual violence uniformly, regardless of the relationship between the perpetrator and victim.

⁵ Whoever commits rape on a women up to twelve years of age shall be punished with death, or rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life which shall mean imprisonment for the remained of that person's natural life, and shall also be liable to fine.

Civil Law Aspect

Though marital rape is not considered a criminal offense under the Indian Penal Code, provisions in civil law provide some legal recourse for victims to pursue through the Protection of Women from Domestic Violence Act 2005.

This Act defines domestic violence comprehensively to include any acts, behaviour or omissions that harm, endanger or potentially endanger the health, safety, life, limb or wellbeing of an abused partner in a domestic relationship. The definition covers a wide range of abuses - physical, sexual, verbal, emotional and economic.

Specifically, sexual abuse is defined under the Act as any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. Unwanted intercourse forced upon a wife without consent clearly falls under this definition of sexual abuse that diminishes a woman's dignity. In other words, the Act recognizes that marital rape is a form of sexual abuse and domestic violence.

Under the 2005 law, a woman has the right to pursue civil remedies for marital rape such as protection orders, judicial separation or monetary compensation from her abusive spouse. However, these remedies focus more on facilitating her exit from the dangerous situation rather than directly deterring or imposing punitive consequences for the criminal acts of sexual violence.

While the Protection of Women from Domestic Violence Act was an important step forward in providing civil remedies for marital rape, it stops short of recognizing forced sex in marriage as a punishable, criminal offense under the Indian Penal Code. The Act does not go far enough in directly addressing prevention and criminalization of the

profoundly violent, non-consensual sexual acts imposed by husbands against their wives. Advocates for women's rights continue to push for removing the marital rape immunity in criminal law in India so that sexual assault within marriage does not remain condoned but rather a punishable crime as with rape outside marriage.

ARGUMENTS IN FAVOUR OF CRIMINALISATION OF MARITAL RAPE

1. International Perspective:

- Discuss how various countries worldwide have addressed the issue of marital rape.
- Provide examples of countries that have recognized marital rape as a criminal offense and abolished legal exemptions.
- Highlight different approaches and the impact of these changes on society.

2. Legal Framework in India:

- Provide an in-depth examination of the existing legal framework in India regarding sexual violence within marriage.
- Discuss specific sections of the law and their interpretation or modification over time.
- Explore landmark cases that have shaped the legal landscape in India.

3. Social Stigma and Psychological Impact:

- Delve into the social stigma attached to marital rape and the enduring psychological impact on survivors.
- Discuss how this stigma affects survivors' overall well-being and their ability to seek help or justice.
- Highlight the importance of addressing the psychological trauma associated with marital rape.

4. Gender Equality:

- Contextualize marital rape within the broader framework of gender equality and women's rights in India.
- Examine the progress made in these areas and the remaining challenges in achieving genuine gender equality.
- Discuss how changes in marital rape laws relate to broader gender equity efforts.

5. Advocacy and Reform Efforts:

- Identify advocacy groups and organizations actively working to reform laws and shift societal attitudes regarding marital rape in India.
- Explore the progress achieved by these groups and the obstacles they face.
- Discuss strategies and initiatives aimed at driving change.

6. Public Awareness and Education:

- Highlight the critical role of public awareness and education in altering societal perceptions and attitudes regarding marital rape.
- Examine the role of educational institutions, media, and community organizations in raising awareness and educating the public about this issue.

- Discuss the impact of campaigns and educational programs.

7. Intersectionality:

- Explore the intersection of marital rape with other social issues, such as class, caste, and religion.
- Discuss how these intersecting factors can complicate the experiences of survivors and the efforts to address the issue.
- Highlight the need for inclusive solutions that consider these complexities.

8. Role of the Judiciary:

- Analyze significant legal cases related to marital rape in India and their significance in setting legal precedents.
- Examine the evolving role of the judiciary in shaping the legal landscape and ensuring justice for survivors.
- Discuss the impact of legal decisions on the enforcement of anti-marital rape laws.

9. The Role of Men:

- Emphasize the importance of involving men in discussions about marital rape and women's rights.
- Explore how men can act as allies in the fight for gender equality and contribute to changing cultural norms.
- Discuss initiatives that engage men in addressing this issue.

10. Comparative Analysis:

- Provide a comparative analysis of India's approach to marital rape with other countries that have reformed their laws.
- Highlight the potential benefits of legal changes and share insights from global experiences.
- Consider international best practices in addressing marital rape for policy development in India.

ARGUMENTS AGAINST CRIMINALISING MARITAL RAPE

1. Argument Against Criminalizing Marital Rape:

- Some argue against criminalizing marital rape, contending that it could undermine the sanctity of marriage and family bonds.
- They believe that making marital rape a crime might blur the line between personal, domestic issues and legal matters, posing challenges for the judicial system.
- Concerns are raised about a potential violation of international boundaries and international law if the state were to pass such legislation.
- Critics suggest that such a decision would likely face opposition and harsh criticism for intruding into the private lives of individuals.

2. Consent and Marriage:

- Proponents of this viewpoint assert that when a couple voluntarily enters into a legitimate marriage, the woman is considered to have given her consent to sexual relations.
- Traditional customs often involve parents' blessings when they arrange marriages, where the absence of explicit consent from the woman for sexual activity is considered a cultural norm.
- It is argued that in arranged marriages, both parties willingly commit to the union as soon as they meet, sometimes even before.

3. Cultural Norms and Expectations:

- Society often instills specific customs, norms, and values from an early age, and deviation from these norms can be seen as socially unacceptable.
- Men have been socialized to expect their wives to fulfill their sexual needs based on these cultural norms.

4. Misuse of Legal Measures:

- Some contend that surveys indicate concerns that spouses may exploit legal action to manipulate their partners or terminate marriages.
- The misuse of legal provisions like Section 498A has been cited, raising questions about its effectiveness as a protective measure.
- This misuse could potentially overwhelm the legal system and lead to delays in delivering justice, especially in addressing the backlog of cases.

5. Existing Legal Framework:

- The Protection of Women from Domestic Violence Act of 2005 was enacted to address domestic abuse, which some argue is sufficient to address conjugal assault.
- Marital assault can be considered under Section 3(a) of this legislation, which encompasses various forms of abuse, including physical, mental, and economic, that endanger the well-being and security of the aggrieved party.

CONCLUSION

Marriage encompasses more than just a formal institution; it signifies the union of two individuals, necessitating the protection of both parties' interests. The abhorrent act of marital rape is tantamount to general rape, imposing profound and enduring consequences, particularly on women.

Marital rape can lead to physical injuries, encompassing harm to intimate body parts, lacerations, discomfort, bruising, muscle tears, exhaustion, and even physical illnesses. Additionally, it inflicts severe psychological trauma on women who have experienced sexual assault within their relationships, instilling a perpetual state of fear.

The misconception that marital rape is less severe than other forms of sexual assault is unsubstantiated. Despite receiving limited attention in the media and academic circles, marital rape represents one of the most perilous aspects of intimate partner abuse. Existing research demonstrates that women subjected to sexual assault by their spouses frequently endure multiple instances and grapple with lasting, severe medical and emotional repercussions. It is imperative to provide unwavering support and debunk the notion that rape by one's spouse is inconsequential, particularly for those who engage with survivors of marital rape. Shedding light on the societal issue of marital rape and extending support to survivors through the dedicated efforts of rape crisis counselors and advocates for battered women is an unequivocal necessity. Speaking out against violence towards women and challenging any sense of entitlement that some men may harbor concerning sexual relations within relationships are pivotal tasks for professionals addressing individuals who perpetrate such abuse.

Conducting comprehensive research into the prevalence of this issue in society is essential. This research should employ substantial, nationally representative samples, as endorsed by Mahoney and Williams in 1998. In light of the limited understanding of the extent of sexual violence within marginalized populations, it becomes paramount to identify suitable forms of assistance and intervention. Of utmost concern is the need for research focusing on the impact of marital rape on children. This entails a meticulous examination of how frequently children are exposed to sexual violence within their households, coerced into involvement, or even made aware of it, a topic that has thus far received minimal research attention. Moreover, conducting an in-depth analysis of how medical professionals and law enforcement agencies handle the issue of marital rape is pivotal from a policy perspective.