

BREAKING THE SILENCE UNDERSTANDING AND ADDRESSING MARITAL RAPE

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I. **ABSTRACT**

Marital rape is a distressing form of sexual violence that occurs when one spouse forces non-consensual sexual acts upon the other within a marital relationship. Historically, societal norms and legal systems overlooked this issue, assuming that marriage implied ongoing consent to sexual activity. However, as we now recognize individual autonomy and the right to bodily integrity, attitudes and legal frameworks have evolved significantly.

In many countries, marital rape is now regarded as a serious offense and has been criminalized. This reflects a fundamental understanding that consent is crucial in all sexual encounters, including within marriage. Legal changes have eliminated marital exemptions and provided clear definitions of consent as being voluntary, informed, and enthusiastic. These developments aim to protect individuals from sexual violence and emphasize the importance of consent, irrespective of marital status.

Despite progress, challenges persist. Cultural, social, and religious beliefs, along with limited access to justice, can impede the effective implementation and enforcement of laws against marital rape in certain regions. To address and prevent marital rape, it is crucial to promote awareness, provide consent education, and establish support services for survivors.

Continued efforts to combat marital rape involve fostering a culture of respect, equality, and consent within intimate relationships. By acknowledging the severity of marital rape, raising awareness, and advocating for survivor support and justice, we can contribute to creating a safer and more equitable environment for all individuals.

KEYWORDS – Sexual intercourse, marital status, relationship, justice, awareness, society, criminalisation.

II. **INTRODUCTION**

⁵¹⁰Marital rape is a distressing and deeply concerning issue in India, where justice is often denied due to outdated and orthodox beliefs. Currently, there is a lack of any specific legal provision regarding marital rape in the country. This creates significant challenges for victims seeking justice, as they are left with limited options to address this form of sexual violence.

In India, the absence of a clear definition of marital rape makes it difficult to prove forceful intercourse by a spouse as marital rape in a court of law. While activists and

media have advocated for the criminalization of marital rape, there are opposing views rooted

in traditional values. Some argue that criminalizing marital rape would undermine the sacred nature of marriage in Hindu culture. Additionally, concerns have been raised about potential misuse of the law through fraudulent cases being filed against husbands.

The Indian government has stated that what might be perceived as rape by one spouse may not be viewed similarly by others, highlighting the complexity of the issue. However, this perspective also reflects the regressive nature of Indian society, which can act as a barrier to criminalizing marital rape.

⁵¹⁰ Indian Penal Code § 375, No. 45 of 1860, India Code.

⁵¹¹Overall, the current situation in India underscores the urgent need for legal reforms and societal change. Addressing marital rape requires a comprehensive approach that involves raising awareness, promoting consent education, and ensuring the protection of individuals within intimate relationships. By fostering a culture of respect, equality, and consent, India can take significant steps towards eradicating all forms of sexual violence, including marital rape.

THE DEFINITION

Marital rape refers to the act of non-consensual sexual intercourse or other forms of sexual acts forced upon one's spouse without their consent or against their will. It involves sexual violence within the context of a marital relationship, where one partner uses their position of trust and intimacy to exploit and violate the other. Marital rape is a serious violation of an individual's bodily autonomy and fundamental human rights, regardless of the marital status of the parties involved. It is now recognized as a criminal offense in many countries, reflecting the understanding that consent is a necessary aspect of all sexual encounters, including within marriage.⁵¹²

TYPES OF MARITAL RAPE

Marital rape can manifest in various forms, just like any other type of sexual violence. Here are some common types of marital rape:

1. **Forceful Intercourse:** This involves the use of physical force or coercion by one spouse to compel the other into engaging in sexual activity against their will.
2. **Non-Consensual Acts:** Marital rape may encompass other forms of non-consensual sexual acts, such as oral sex, anal sex, or any sexual activity that one spouse did not agree to participate in.
3. **Incapacitated Spouse:** When one spouse takes advantage of the other's intoxicated state or inability to give consent due to physical or

mental incapacitation, it constitutes marital rape.

4. **Threats and Intimidation:** The use of threats, emotional manipulation, or intimidation to coerce a spouse into unwanted sexual acts falls under this category of marital rape.

5. **Sexual Abuse within a Controlling Relationship:** In situations where one spouse exercises significant control over the other's life and uses sex as a tool for manipulation and dominance, it can be considered marital rape.

6. **Economic Coercion:** When one partner forces the other into sexual activity as a condition for financial support or meeting basic needs, it qualifies as marital rape.

7. **Cultural or Religious Pressure:** In some cases, cultural or religious beliefs may be used to justify and perpetrate marital rape, leading to severe violations of the victim's autonomy and rights.

8. **Marital Rape during Separation or Divorce:** Even during the process of separation or divorce, one spouse may continue to force sexual encounters upon the other, disregarding their lack of consent.⁵¹³

It is important to recognize that all forms of marital rape are serious violations of an individual's autonomy and rights, and they deserve the same attention and legal consequences as any other type of sexual violence. The criminalization and acknowledgment of marital rape are vital steps in ensuring the protection of individuals within intimate relationships.

WHAT DOES LAW SAYS?

In India, the legal landscape concerning marital rape is a complex and concerning issue. As per the Indian Penal Code, marital rape is not recognized as a criminal offense under certain conditions. The law includes an exception clause in Section 375 that states there cannot be a rape charge when the husband has sexual intercourse with his wife who is not under 15 years of age, without her consent. This exception clause has been widely criticized for

⁵¹¹ EQUITY NOW <https://www.equalitynow.org/who-we-are/> (10 JULY, 2023)

⁵¹² Marital Rape in India: 36 countries where marital rape is not a crime, India Today, JULY. 12, 2023.

⁵¹³ To Have and to Hold: The Marital Rape Exemption and the Fourteenth Amendment, 99(6) Harv. L. Rev. 1255, 1256 (1986).

discriminating against the consent of married women and goes against the principles of equality enshrined in Article 14 of the Indian Constitution.

Unlike many countries where marital rape is criminalized, the current legal framework in India does not provide specific protection to married women from non-consensual sexual acts by their spouses. This legal gap denies justice to victims of marital rape and perpetuates gender inequality within marital relationships. In several progressive legal systems worldwide, marital rape has been criminalized, treating it as a serious offense similar to other forms of sexual assault. Marital exemptions that previously shielded spouses from rape charges have been repealed, emphasizing the importance of consent in all sexual encounters, including within marriage.

Furthermore, these laws define consent in clear terms, stressing that marriage or previous sexual activity does not imply ongoing consent. Consent is recognized as an active and voluntary agreement that can be withdrawn at any time.

Despite these positive developments, challenges persist in some regions, including India. Cultural, social, and religious beliefs, along with a lack of awareness and limited access to justice, hinder the effective implementation and enforcement of laws criminalizing marital rape in certain jurisdictions.⁵¹⁴

It is essential to highlight that addressing marital rape requires a comprehensive approach. Society must recognize the importance of individual autonomy and the right to bodily integrity, regardless of marital status. By advocating for legal reforms, raising awareness, and fostering a culture of consent and equality within intimate relationships, we can work towards ensuring the safety and dignity of all individuals, irrespective of their marital status.

INDIAN JUDICIARY

⁵¹⁴ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India); Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

The issue of marital rape in India has sparked heated debates, with the Indian judiciary playing a crucial role in shaping the discourse. However, there have been instances where certain statements made by judicial figures shocked society, revealing the persistence of orthodox thinking within both the judiciary and society. Despite some positive steps taken by the Indian judiciary towards criminalizing marital rape, significant progress is still needed.⁵¹⁵

In the case of *Arnesh Kumar v. State of Bihar*⁵¹⁶, the Apex Court's statement that criminalizing marital rape would lead to the collapse of social and family systems raised concerns. Similarly, a controversial incident occurred when CJI SA Bobde asked a rape accused if he would marry the victim, highlighting outdated attitudes.

In the past, judgments like *Harvinder Kaur v. Harmander Singh*⁵¹⁷ in 1984 emphasized that the Constitution should not interfere in household matters as it could harm the institution of marriage. However, there have been instances where the courts acknowledged the seriousness of marital rape. In *Independent Thought v. Union of India*,⁵¹⁸ the divisional bench held that sexual intercourse with a girl below 18 years of age is rape, whether she is married or not.

Advocate Karuna Nundy highlighted the inconsistency in the law, where raping a wife is exempt from criminal liability despite other forms of abuse being punishable. *Nimesh Bhai Bharat Bhai Desai v. State of Gujarat*⁵¹⁹ (2018) emphasized that dehumanized treatment of women, including marital rape, should not be tolerated and must be criminalized.

Justice DY Chandrachud stressed the importance of the freedom to say 'no' to sexual intercourse even after marriage. The Kerala High Court's ruling in 2021 recognizing marital rape as a valid ground for divorce was a significant step forward.

⁵¹⁵ India Const. art. 14.

⁵¹⁶ *Arnesh Kumar v. State of Bihar* 2014 SCC 273

⁵¹⁷ *Harvinder Kaur v. Harmander Singh* AIR 1984 Delhi 66, ILR 1984 Delhi 546 1984 RLR 187,

⁵¹⁸ *Independent Thought v. Union of India* (2017) 10 SCC 800

⁵¹⁹ *Nimesh Bhai Bharat Bhai Desai v. State of Gujarat* (2018) SCC online Guj 732[104] 62

Disturbing reports indicate that a large percentage of sexually abused married women are victimized by their husbands, revealing the magnitude of the problem. According to a UN Population Fund report, over two-thirds of married women in India have experienced physical or sexual abuse.

These findings underscore the urgency of addressing marital rape and creating a more equitable and just society. Progress in criminalizing marital rape is vital to protect the rights and dignity of married individuals and ensure that consent and respect are upheld within all intimate relationships. Continued efforts by lawmakers, activists, and society at large are essential in eradicating this form of violence and promoting gender equality.

CONCLUSION

Marital rape is a deeply concerning issue that reflects a grave violation of an individual's rights and dignity within a marital relationship. Allowing marital rape and not criminalizing it sends a distressing message, implying that a woman's human dignity may be accorded lesser value when she is married. This argument, often put forward by orthodox individuals to protect the stability of marriage, is illogical and unjust. Marriage should not imply that a woman is always ready and consenting to establish physical relations.

Fortunately, societal attitudes and legal frameworks have evolved over time, recognizing the severity and harm caused by marital rape. Many countries have taken significant steps by criminalizing marital rape as a serious offense, eliminating any marital exemptions that previously existed. These laws emphasize that consent is a fundamental aspect of all sexual encounters, including within marriage. They make it clear that marriage does not equate to ongoing consent to sexual activity and that consent must always be voluntary, informed, and enthusiastic.

Despite the progress made, challenges remain in effectively addressing marital rape. Cultural, social, and legal barriers, coupled with a lack of awareness and limited access to justice, hinder

the implementation and enforcement of laws against marital rape in certain regions.

To combat marital rape comprehensively, it is essential to continue raising awareness about this issue, promoting consent education, and providing robust support services to survivors. Efforts should be directed towards fostering a culture of respect, equality, and consent within all intimate relationships. By recognizing the gravity of marital rape and working towards its prevention, support, and justice for survivors, we can contribute to creating a safer and more equitable society for everyone. The time has come to amend criminal laws to ensure the recognition of women's equality and their right to the integrity of their own bodies within marriage.

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