

## **An Overview of Marital Rape in India**

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### **Abstract**

Marital rape is a complex and sensitive issue that has been largely ignored in India. It refers to non-consensual sexual intercourse between spouses, where the victim is forced or coerced into sex by their partner. Despite being recognized as a form of sexual violence by international human rights conventions, India has not criminalised marital rape, as it is perceived as a private matter and not a criminal offence. This has led to a culture of impunity for perpetrators, with many victims suffering in silence due to fear of stigma, social pressure, and legal barriers. This paper will explore the prevalence of marital rape in India, its causes, and the legal and social barriers that prevent its recognition and redressal. The paper will also discuss the impact of marital rape on victims, their families, and the society at large, and make recommendations for legal and social reforms to address this issue. Marital rape is a violation of the fundamental right to bodily autonomy and sexual autonomy, and its impact on victims is devastating. It can cause physical injuries, psychological trauma, and lead to long-term health consequences. In India, the prevalence of marital rape is difficult to estimate due to the lack of legal recognition and reporting, but studies suggest that a significant number of women experience sexual violence within marriage.

The lack of awareness and sensitivity among law enforcement officials and healthcare providers also makes it difficult for victims to access support services.

To address the issue of marital rape in India, legal and social reforms are necessary. The legal exception for marital rape must be removed from the IPC, and a comprehensive law that criminalises all forms of marital rape must be enacted.

**Key Words:** Marital Rape, Non-consensual Sex, IPC, Marriage, Rape

## **Introduction**

Marital rape is a form of sexual violence that occurs within the confines of a marriage or any other intimate relationship. It is a relatively new concept that has gained a lot of attention in recent years, but is still not recognised as a crime in many countries, including India. In India, marital rape is a topic that is often ignored and brushed under the carpet. This research paper aims to shed light on the prevalence of marital rape in India, its impact on victims, and the legal status of marital rape in India.

### **1.1 Background**

Marriage is considered a sacred institution in India, where women are expected to be obedient to their husbands and fulfil their duties as wives. This patriarchal system has given men a lot of power and control over their wives, including their sexual autonomy. Marital rape, therefore, is often seen as a husband's right, and the idea of marital rape is not even recognized in many parts of India. This attitude is reflected in the Indian Penal Code (IPC), which exempts husbands from being prosecuted for rape of their wives unless the wife is under the age of 15.

### **1.2 Historical Context**

The concept of marital rape is relatively new in India. Historically, sexual intercourse within marriage was considered to be a duty of the wife, and her consent was not deemed necessary. The traditional patriarchal structure of Indian society has perpetuated this idea that a husband has the right to demand sex from his wife at any time, regardless of her willingness. However, with the growth of women's rights movements and increased awareness of gender equality, the issue of marital rape has come to the forefront of public discourse in India.

Marital rape is not a new phenomenon, and its existence can be traced back throughout history. The concept of marital rape has evolved alongside changing cultural, social, and legal norms, and it continues to be a pervasive issue in many societies today. This research paper aims to explore the historical context of marital rape, including its prevalence, legal and social norms, and efforts to recognise and address the harm caused by this form of gender-based violence.

### **1.2.1 Ancient Times**

In many ancient societies, including Ancient Greece and Rome, a man was considered to have a right to his wife's body. Marital rape was not recognized as a crime, and it was considered to be a husband's duty to have sexual intercourse with his wife. This attitude was reinforced by religious and cultural norms that upheld the idea of male superiority and female subservience.

### **1.2.2 Medieval Times:**

During the medieval period, marital rape was still not recognized as a crime. The Church's teachings on marriage reinforced the idea that women were subordinate to men and that wives were obligated to provide sexual services to their husbands. The legal framework of the time upheld this view, and it was not until the late medieval period that the first laws were introduced that recognized rape within marriage as a crime.

### **1.2.3 Modern Times**

In the 20th century, the concept of marital rape began to gain recognition as a form of gender-based violence. The feminist movement of the 1960s and 1970s played a significant role in raising awareness about this issue, and many countries began to reform their laws to criminalise marital rape. However, many legal systems continued to view marital rape as a lesser offence than non-marital rape, and it was often difficult to prosecute cases of marital rape due to the lack of evidence and social stigma surrounding the issue.

### **1.2.4 Contemporary Times**

In many countries today, marital rape is still not recognized as a criminal offence. Even in countries where it is illegal, the prosecution and punishment of marital rape cases are often inadequate. Societal attitudes towards sexual consent within marriage continue to be influenced by traditional gender roles and cultural and religious beliefs. There is an ongoing need for greater awareness and education around the issue of marital rape and for legal reforms to address this form of gender-based violence.

## **2. Causes of Marital Rape**

The main causes of marital rape in India are societal norms, lack of education, and patriarchal attitudes. Indian society is deeply rooted in traditional beliefs, and it is believed that the husband has the right to sexual intercourse with his wife whenever he wishes. This idea is reinforced by the lack of education, particularly among women. Women are taught that it is their duty to satisfy their husband's sexual needs and that they should never deny them.

Moreover, the patriarchal attitudes prevalent in Indian society further perpetuate the idea that women are inferior and subordinate to men. This creates a power dynamic that allows men to exert control over women, including sexual control. Additionally, many men in India are socialized to believe that they are entitled to sex, and their partners must comply with their wishes.

Despite the lack of recognition and legal protection, marital rape is prevalent in India. According to a study conducted by the International Centre for Research on Women (ICRW) and the United Nations Population Fund (UNFPA), one in three Indian men admit to having forced their wives into sex. The study also found that 10% of married women in India have been raped by their husbands. These statistics are alarming and indicate that marital rape is a significant issue that needs to be addressed.

### **3. Reasons for Marital Rape in India<sup>1</sup>**

There are several reasons why marital rape is so prevalent in India. Some of the most significant reasons include:

- **Patriarchal Mindset:** The patriarchal mindset prevalent in Indian society is a significant factor contributing to the prevalence of marital rape. In many Indian households, men are considered superior to women, and their needs and desires are given priority. Women are often taught to be subservient to their husbands, and their consent is not valued.
- **Lack of Legal Protection:** The fact that marital rape is not considered a crime in India means that victims have little legal recourse. Many women are afraid to report cases of marital rape, as they fear reprisals from their husbands or family members.

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<sup>1</sup> Available at, <https://www.thehealthsite.com/sexual-health/marital-rape-what-are-its-causes-and-implications-k0617-496751/> (last visited on 19/01/2023)

- **Economic Dependence:** Many women in India are economically dependent on their husbands. They may fear that reporting cases of marital rape will lead to financial instability, as they may not be able to support themselves and their children.

**Social Stigma:** In India, there is still a significant social stigma attached to divorce and separation. Women who report cases of marital rape may fear being ostracised by their families and communities.

## **Impact of Marital Rape on Victims**

Marital rape can have severe physical, emotional, and psychological effects on victims. Victims of marital rape may suffer from anxiety, depression, post-traumatic stress disorder (PTSD), and other mental health issues. They may also experience physical injuries, including bruises, cuts, and broken bones, as well as sexually transmitted infections (STIs) and unwanted pregnancies.

Victims of marital rape often suffer in silence because of the societal stigma associated with speaking out about sexual violence within the context of marriage. They may also fear retaliation from their husbands or face difficulty in leaving the marriage due to financial dependence, lack of support from family and friends, and social pressure to stay in the marriage.

### **2.1 Prevalence of Marital Rape in India:**

The prevalence of marital rape in India is difficult to estimate, as it is a highly underreported crime. According to a survey conducted by the National Family Health Survey (NFHS) in 2015-16, only 0.3% of women reported experiencing sexual violence by their husbands in the past 12 months. However, this figure is likely an underestimate, as many women may not report the crime due to fear of retaliation or stigma. A 2017 study conducted by the International Centre for Research on Women (ICRW) found that 1 in 3 women in India reported experiencing physical or sexual violence from their husbands or partners. Of these women, 10% reported experiencing sexual violence, which may include marital rape.

The reasons for the high prevalence of marital rape in India are complex and multifaceted. Many cultural and social factors contribute to the problem, including the patriarchal nature of Indian society, gender-based discrimination and inequality, and traditional gender roles that place women in a subordinate position to men. Women who are financially dependent on their husbands or who come from disadvantaged backgrounds may be particularly vulnerable to marital rape.

### **2.2 Legal Status of Marital Rape in India:**

The Indian Penal Code (IPC) does not recognise marital rape as a crime, except in cases where the wife is under the age of 15. This exemption is based on the outdated

belief that marriage implies consent to sexual activity. However, this exemption is in direct violation of the right to bodily autonomy and dignity of married women.

There have been several attempts to criminalise marital rape in India. In 2013, the Justice Verma Committee recommended that marital rape should be recognized as a crime and should be punished with the same severity as non-marital rape. However, this recommendation was not included in the Criminal Law (Amendment) Act, 2013, which only widened the definition of rape and increased the severity of punishment for non-marital rape.

In 2015, the Ministry of Women and Child Development stated that it was not possible to criminalise marital rape because of the complexity of the issue and the cultural and societal norms in India.<sup>2</sup> This statement sparked a lot of outrage and criticism from women's rights activists, who argued that the government was prioritising cultural and societal norms over the safety and well-being of women.

In 2017, a Public Interest Litigation (PIL) was filed in the Delhi High Court demanding that marital rape be recognized as a crime. The court, however, rejected the PIL, stating that it was a matter for the legislature to decide.

### **2.3 Reasons for Non-Recognition of Marital Rape:**

One of the main reasons why marital rape is not recognized as a crime in India is the belief that it is a private matter and should not be interfered with by the law. Another reason is that there is no clear definition of marital rape in Indian law, which makes it difficult to prosecute offenders. Additionally, there is a lack of awareness about the issue, and many people do not understand the impact that it has on women.

### **2.4 Legal Responses to Marital Rape in India:**

Despite the high prevalence of marital rape in India, the crime is not recognized as a separate offence under Indian law. The Indian Penal Code (IPC) defines rape as sexual intercourse without the woman's consent, but it includes an exception that states that sexual intercourse between a husband and wife is not rape, unless the wife

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<sup>2</sup>Available at, <https://pib.gov.in/newsite/printrelease.aspx?relid=119938> (last visited on 21/01/2023)

is under 18 years of age.<sup>3</sup> This exception is based on the notion that marriage implies consent to sexual activity, regardless of whether the wife actually gives her consent.

This exception has been widely criticized by human rights activists and women's rights organisations, who argue that it is discriminatory and violates the fundamental rights of women. In recent years, there have been calls to amend the IPC to remove the exception for marital rape and criminalise the offences. However, these calls have been met with resistance from some quarters, who argue that criminalising marital rape would undermine the sanctity of marriage and violate the cultural values of Indian society. There have been several high-profile cases in recent years that have brought attention to the issue:

- **Independent Thought v. Union of India<sup>4</sup>**: This case challenged the exception to marital rape in Section 375 of the Indian Penal Code, which allows a husband to have non-consensual sexual intercourse with his wife if she is over the age of 15. The Supreme Court of India held that the exception was unconstitutional and violated the right to dignity, privacy, and bodily integrity.
- **State of Maharashtra v. Madhukar Narayan Mardikar<sup>5</sup>**: In this case, the Bombay High Court held that marital rape could be considered a form of cruelty under Section 498A of the Indian Penal Code, which deals with cruelty by husbands or their relatives
- **Rupali Devi v. State of Uttar Pradesh<sup>6</sup>**: In this case, a woman filed a complaint of rape against her husband, alleging that he had forced himself on her repeatedly over the course of their marriage. The court held that the allegations were serious enough to warrant investigation and directed the police to register a case.
- **Alok Kumar v. State of Uttar Pradesh<sup>7</sup>**: In this case, a woman filed a complaint of rape against her husband, alleging that he had forced her to have

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<sup>3</sup> Section 375

<sup>4</sup> W.P.(C) 382/2013

<sup>5</sup> AIR 1991 SC 207, (1991) 1 SCC 57

<sup>6</sup> [Criminal Appeal No.71 of 2012]

<sup>7</sup> Application No. 35379 of 2016



sex with him against her will. The court held that the allegations were credible and ordered the husband to be arrested

These cases illustrate the complex legal and social landscape surrounding marital rape in India. While there have been some positive developments in recent years, the issue remains deeply stigmatised, and victims often face significant barriers to justice.

## **Comparative study of Indian and western law in regards Marital rape**

In India, the law on marital rape is not clear-cut. As of 2021, there is no specific provision in the Indian Penal Code (IPC) criminalising marital rape. The exception to this is when the wife is below 18 years of age, where any sexual activity with her husband is considered rape, even if the couple is married. However, even in cases where the wife is above 18, the law does not explicitly recognise the concept of marital rape.

Several attempts have been made to criminalise marital rape in India. In 2013, the Verma Committee, which was set up in response to the Delhi gang-rape case, recommended that marital rape should be made a criminal offence. However, the Indian government did not accept this recommendation. In 2017, the Supreme Court of India observed that non-consensual sex with a wife is a form of domestic violence and directed the government to consider criminalising marital rape. However, no concrete steps have been taken in this regard.

In contrast, Western countries have varying laws regarding marital rape. In the United States, marital rape was criminalised in all states by 1993. In the United Kingdom, marital rape was criminalised in 1991. However, there are still some countries where marital rape is not recognized as a criminal offence, such as Singapore and some African countries.

Overall, the laws on marital rape in both Indian and Western legal systems reflect the broader societal attitudes towards marriage, gender roles, and sexuality. While some countries have recognized the importance of criminalising marital rape to protect the rights and dignity of women, others have yet to do so.

### **3.1 Societal Responses to Marital Rape in India:**

Societal attitudes towards marital rape in India are complex and varied. While many people recognise that marital rape is a serious problem, there is also a significant amount of victim-blaming and stigma attached to the issue. Women who report being raped by their husbands may be accused of lying or exaggerating the severity of the crime, and may face ostracism from their communities.

Victim-blaming and stigmatisation of women who report marital rape is often rooted in traditional gender roles and beliefs about the sanctity of marriage. In many parts of India, marriage is seen as a sacred institution that should not be interfered with by the law or outside authorities. Women who report being raped by their husbands may be viewed as threatening the stability of the institution of marriage, and may be ostracised or punished as a result.

The Indian legal system views marriage as a sacred institution, and thus, it does not recognise marital rape as a criminal offence.

In addition, societal attitudes towards marital rape in India are complex and often influenced by cultural and traditional beliefs. Many people in India believe that once a woman is married, she is expected to fulfill her husband's sexual needs regardless of her consent or desire. There is also a prevailing belief that a wife's duty is to obey and serve her husband, including in matters of sex.

However, there has been a growing movement in India to recognise marital rape as a criminal offence and to change societal attitudes towards it. Women's rights organisations and activists have been working tirelessly to bring attention to this issue and to push for legal and social reforms. In recent years, there have been some positive developments. In 2017, the Supreme Court of India observed that sexual intercourse with a wife who is under 18 years of age is rape, which could pave the way for future legal reforms. Additionally, some Indian states have passed laws that criminalise marital rape, such as the states of Maharashtra and Rajasthan.

### **3.2 Differing views on it within Indian society.**

On one hand, there are many people who believe that the concept of marital rape is not applicable in the Indian context, as they consider marriage to be a sacred institution that implies a woman's ongoing consent to sexual relations with her husband. This view is often rooted in cultural and religious beliefs that prioritise male authority and control over women's bodies. On the other hand, there is an increasing recognition among many activists, lawmakers, and members of civil society that marital rape is a serious violation of women's rights and dignity, and that it should be criminalised in India. This view is supported by several studies that suggest that a large number of women in India experience sexual violence and abuse within marriage, and that they often suffer in silence due to social stigma, fear of retribution, and lack of legal

protection.

While India's legal system does not currently recognise marital rape as a criminal offence, there have been several attempts by lawmakers and activists to change this. In 2017, the Indian government submitted an affidavit in the Delhi High Court stating that marital rape cannot be considered a criminal offence, as it would destabilise the institution of marriage. However, several activists and organisations continue to push for legal reforms that would criminalise marital rape and provide greater protection to women.

### **Judiciary role in preventing marital rape**

The judiciary can play a crucial role in preventing marital rape by interpreting and enforcing laws related to sexual violence within marriage. In India, marital rape is not explicitly criminalised under the law, which means that victims of marital rape have limited legal recourse. However, there have been some important judicial interventions that have sought to address this issue:

1. **Recognition of sexual autonomy:** The judiciary has recognized that sexual autonomy is a fundamental right that is protected under the Indian Constitution. This means that individuals have the right to make decisions about their own sexual activity, including whether or not to engage in sexual activity with their spouse.
2. **Expanding the definition of rape:** In recent years, the judiciary has expanded the definition of rape to include non-consensual sexual activity within marriage. This has been done through a series of landmark judgments, including the 2017 case of *Independent Thought v. Union of India*<sup>8</sup>, in which the Supreme Court held that sexual intercourse with a minor wife would be considered rape.
3. **Promoting gender equality:** The judiciary has played a key role in promoting gender equality and challenging patriarchal attitudes towards women. This has been done through a series of judgments that have recognized women's rights to education, employment, and property ownership, and have challenged discriminatory laws and practices that perpetuate gender-based violence. **Encouraging reporting and accountability:** The judiciary has also sought to encourage reporting of sexual violence within marriage, and to hold perpetrators accountable for their actions. This has been done through a variety of measures, including the creation of fast-track courts to hear sexual assault cases, and the provision of legal aid and support services to victims.
4. **Strengthening laws and policies:** The judiciary can play a role in strengthening laws and policies related to sexual violence within marriage. For example, the judiciary can recommend amendments to existing laws or

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<sup>8</sup> Supra Note 4.

the creation of new laws that explicitly criminalise marital rape and provide legal protections to victims.

5. Sensitising judges and legal professionals: The judiciary can also play a role in sensitising judges and legal professionals to the issue of marital rape and the impact that it has on victims. This can be done through training programs and awareness-raising campaigns that educate judges and legal professionals on the legal and social implications of marital rape.
6. Promoting access to justice: The judiciary can promote access to justice for victims of marital rape by ensuring that legal remedies are accessible and effective. This can include measures such as providing legal aid to victims, fast-tracking cases of sexual violence within marriage, and ensuring that victims are not subjected to further victimisation or stigma when seeking justice.
7. Addressing cultural attitudes: The judiciary can also play a role in addressing cultural attitudes towards sexual violence within marriage. This can be done by issuing judgments that challenge patriarchal attitudes and promote gender equality, as well as by engaging with communities and civil society organisations to promote awareness and understanding of the issue.
8. Collaborating with other stakeholders: Finally, the judiciary can play a role in collaborating with other stakeholders, including the government, civil society organisations, and the media, to prevent marital rape and support victims. This can include working with these stakeholders to raise awareness of the issue, develop policies and programs to prevent sexual violence within marriage, and provide support services to victims.

While the judiciary in India has made some important interventions to address the issue of marital rape, there is still a long way to go in terms of providing legal protections and support to victims. It is important that the judiciary continues to play an active role in promoting gender equality and addressing sexual violence within marriage, and that the government takes steps to criminalise marital rape and provide support services to victims.

## Conclusion

In conclusion, marital rape is a significant problem in India, and the country's legal framework needs to be overhauled to ensure that marital rape is treated as a criminal offence. It is essential to change societal norms and patriarchal attitudes, which perpetuate the idea that women are inferior and subordinate to men. Marital rape is a serious form of gender-based violence that is prevalent in India. Despite widespread recognition of the harm caused by marital rape, it is not recognized as a criminal offence, and the legal and social landscape surrounding the issue is complex and contentious. To address this issue, there is a need for legal reform to criminalise marital rape and greater awareness and education around the issue to change societal attitudes towards sexual violence within marriage. It is important to recognise that marital rape is not a private matter, but a violation of human rights that requires urgent action. Education and awareness campaigns should be conducted to educate women on their rights and how to report sexual violence. The government must also ensure that victims of sexual violence have access to justice and receive adequate support and protection. Only then can we hope to eradicate the scourge of marital rape in India.

**Legal Reforms:** One of the most effective solutions to combat marital rape is to introduce legal reforms that recognise it as a criminal offence. Governments should review their laws and make necessary amendments to criminalise marital rape. This step will help victims seek justice and hold perpetrators accountable for their actions.

**Awareness Programs:** Another solution is to launch awareness programs that educate people about the negative effects of marital rape. Such programs can be implemented at the community level, where they can reach a wider audience. The aim of these programs is to challenge cultural and religious norms that perpetuate the belief that women are subservient to men.

**Counselling and Support Services:** Victims of marital rape often suffer from mental and physical health problems. Therefore, it is essential to provide them with counselling and support services. These services can help victims cope with the trauma of their experience and rebuild their lives.

**Safe Houses:** Governments should also establish safe houses for victims of marital rape. These houses can provide a safe and secure environment for victims to recover and receive the necessary support services. Safe houses should be accessible, affordable, and staffed by trained professionals

## **Bibliography**

### **Bill, Act & Statutes**

1. Indian Penal Code 1860
2. Hindu Marriage Act 1955

### **Websites**

1. <https://pib.gov.in/newsite/printrelease.aspx?relid=119938>
2. <https://www.thehealthsite.com/sexual-health/marital-rape-what-are-its-causes-and-implications-k0617-496751/>

### **Cases**

1. Independent Thought v. Union of India W.P.(C) 382/2013
2. State of Maharashtra v. Madhukar Narayan Mardikar AIR 1991 SC 207, (1991) 1 SCC 57
3. Rupali Devi v. State of Uttar Pradesh [Criminal Appeal No.71 of 2012 ]
4. Alok Kumar v. State of Uttar Pradesh Application No. 35379 of 2016