



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 4 AND ISSUE 1 OF 2024

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 1 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-1-of-2024/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



ILE Publication House is the  
**India's Largest  
Scholarly Publisher**

© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>



## UNVEILING THE SHADOWS: A COMPREHENSIVE STUDY ON MARITAL RAPE, LEGAL FRAMEWORKS, AND GENDER-BASED VIOLENCE IN INDIA

**AUTHOR** – RAVEENA KP, STUDENT AT CHRIST DEEMED TO BE UNIVERSITY

**BEST CITATION** – RAVEENA KP, UNVEILING THE SHADOWS: A COMPREHENSIVE STUDY ON MARITAL RAPE, LEGAL FRAMEWORKS, AND GENDER-BASED VIOLENCE IN INDIA, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (1) OF 2024, PG. 491-497, APIS – 3920 – 0001 & ISSN – 2583-2344

### **Abstract:**

Marital rape, a form of sexual violence within the confines of marriage, remains a contentious issue globally, with varying legal frameworks and societal attitudes shaping its recognition and criminalization. This research paper delves into the complex dynamics of marital rape, exploring the concept within the broader context of rape laws, societal norms, and gender dynamics. The study focuses primarily on the Indian legal landscape, examining the provisions of the Indian Penal Code, the Protection of Women from Domestic Violence Act, and relevant marriage laws to understand the treatment of marital rape within the country.

The paper begins by elucidating the historical and societal perceptions that have perpetuated the notion of women as property and homemakers, leading to the normalization of marital rape and the denial of women's autonomy and consent within marriage. It highlights the inherent injustice and violation of personal liberty that marital rape entails, emphasizing the urgent need for legal recognition and criminalization of this form of violence.

In India, the legal framework surrounding marital rape is complex and inadequate, as highlighted by the provisions of the Indian Penal Code that exempt non-consensual sexual intercourse within marriage from the definition of rape. The study delves into the intricacies of Section 375 and Section 376 of the IPC, shedding light on the loopholes that allow for the impunity of perpetrators of marital rape. Additionally, the paper explores the implications of the Protection of Women from Domestic Violence Act, which recognizes marital rape as a form of domestic violence and provides avenues for legal recourse for survivors.

Furthermore, the research paper delves into the intersection of fundamental rights, privacy, and dignity within the context of marital rape, drawing on landmark judgments by the Supreme Court of India that underscore the violation of Article 21 rights through acts of rape. It emphasizes the need for a paradigm shift in societal attitudes towards marital rape, recognizing it not merely as a moral wrong but as a criminal offense that warrants legal redress and punitive action.

The study also delves into the age of consent for marriage under Hindu and Muslim marriage laws, highlighting the disparities and implications of age requirements on the vulnerability of women to marital rape. It underscores the importance of consent within marriage and challenges the archaic notions that equate marriage with automatic consent to sexual intercourse.

Moreover, the paper delves into the prevalence of domestic violence and rape in India, citing statistics from the National Crime Records Bureau reports to underscore the pervasive nature of gender-based violence in the country. It underscores the urgent need for legislative reforms, societal awareness, and support services to combat marital rape effectively and ensure the protection of women's rights and dignity.

In conclusion, the research paper advocates for the criminalization of marital rape, emphasizing the imperative of legal reforms, societal change, and survivor-centric support mechanisms to address

this insidious form of violence. It calls for a holistic approach that recognizes women's autonomy, bodily integrity, and right to live free from violence within the institution of marriage. By shedding light on the complexities and challenges surrounding marital rape, this study aims to contribute to the discourse on gender-based violence and advocate for a more just and equitable society for all.

### Research Questions

1. How does the Indian legal framework, including the Indian Penal Code and the Protection of Women from Domestic Violence Act, address marital rape?
2. What are the implications of the age of consent for marriage under Hindu and Muslim marriage laws on the vulnerability of women to marital rape?
3. What are the challenges and complexities surrounding the criminalization of marital rape, and what legal reforms, societal changes, and support mechanisms are needed to combat this form of violence effectively?
4. How can societal attitudes towards marital rape be shifted to recognize it as a criminal offense rather than just a moral wrong?
5. What are the international conventions and frameworks that emphasize the need to criminalize marital rape and provide support services to survivors?
6. What are the implications of marital rape on women's physical and psychological health, autonomy, and overall quality of life?
7. How can the criminalization of marital rape contribute to promoting human rights, gender equality, and social justice?
8. What are the key steps that nations need to take to ratify and implement international conventions to unequivocally recognize marital rape as a crime and provide necessary support to survivors?

### Introduction

In Roman culture, the term "Raptus" encompassed the notion of violent theft, applicable to both property and individuals. It was commonly associated with abduction, particularly referring to the act of forcefully

taking a woman against her will or subjecting her to sexual assault. In this context, the offense was viewed as the unlawful seizure of a woman, disregarding the consent of her guardian or those with legal authority over her. Interestingly, the harm inflicted was often perceived as a transgression against the woman's father or husband, considering women as possessions under their control. While Roman law did acknowledge rape as a criminal act during its historical period, stories from early Rome frequently depicted instances of rape in myths and legends. In the English language, the concept of forced sexual intercourse was typically expressed as "stuprum," denoting a sex crime involving coercion or violence.

Rape is a sexual assault that involves non-consensual sexual intercourse, violating an individual's physical, mental, and psychological well-being. The age of consent in India, according to the Protection of Children from Sexual Offenses Act (POCSO), has been raised from 16 to 18 years. In India, rape committed by a third party falls under sections 375 and 376 of the Indian Penal Code, 1860. Rape is the most gruesome and barbaric act of violating the bodily integrity and honor of a woman. It destroys the entire physical and mental composure pushes the victim into a deep emotional crisis and reduces her to a living corpse. It is a crime against basic human rights one is entitled to and a clear violation of the Right to Life enshrined in Article 21 of our Constitution.

Rape in India is one of the most common crimes against women and a serious national problem. While per-capita reported incidents are quite low compared with other countries, a new case is reported every 20 minutes. According to the National Crime Records Bureau, 24,206 rape cases were registered in

India in 2011, although experts believe that the number of unreported cases is much higher. Children are more vulnerable to this crime and more than 7200 children are raped each year in India. A survey reveals that the vast majority of children in India are physically abused and such occurrences are disturbingly common

Surprisingly, marital rape is not covered under these same sections. Before delving into the reasons behind this omission, it is essential to understand what constitutes marital rape and the role of consent within marriage. Marital rape involves sexual intercourse with one's spouse without their consent or through coercion, force, or compulsion. Legally, girls above the age of 18 and boys above the age of 21 are permitted to marry, and this age serves as the age of consent for marriage.

The disparity in the legal marriage ages for women and men has raised questions about whether women mature earlier, perpetuating the biased idea that women should be younger than their male counterparts. There is no scientific basis for this assumption, which has led the Law Commission to recommend a uniform age for both genders, thus mitigating discrimination. However, the fundamental question remains: Can marriage be considered a form of consent for sexual intercourse?

Methods Marriage is not merely a union between two individuals; it extends to their families as well. However, the agreement of two families to a marriage does not equate to consent. Consent within a marriage is critical for several reasons:

Firstly, the husband and wife will live together, and since marital rape is not yet criminalized, it is essential for women to feel safe and comfortable.

Secondly, many women are financially dependent on their families, giving the husband an upper hand and dominance.

Thirdly, in patriarchal societies like ours, there is a normalization of male dominance, violence, and abuse.

Fourthly, divorce is stigmatized in our society, making it essential for both spouses to understand what they are entering into.

In earlier times, families believed that it was a man's right to have sexual intercourse with his wife, and the wife's duty was to accept it without objections. However, the modern era has witnessed significant changes in societal norms, laws, and mindsets. Another reason marital rape remains uncriminalized is the fear that many wives might seek divorce, which is considered taboo in India. Marriage does not translate into automatic consent. Consent involves giving permission for something to happen, but marriage is a complex institution with numerous expectations and dynamics that society tends to overlook. Marriage is a social contract, not an implicit agreement for sexual intercourse. It is ultimately the woman's choice to engage in any activity, whether married or not.

While husbands can be charged with violence for physically abusing their wives or committing acts of cruelty, the fact that rape is not criminalized is a grave omission. In criminal cases, the presence of mens rea, the guilty mind, is necessary to establish the crime. In rape cases, mens rea is demonstrated when the man is aware that the woman does not consent, yet some men believe it is acceptable to force their wives and deny any wrongdoing.

For generations, society has viewed women as homemakers and the property of their spouses, perpetuating the idea that a wife's role is to fulfill her husband's sexual desires without objection. This entitlement has compromised equality and justice. Rape is not only a violent act but also a severe infringement on personal liberty and individual freedom.

#### ***What is Marital Rape in the Legal Sense?***

Marital rape is not fully criminalized; instead, it is considered wrongdoing against women and addressed with some legal consideration. The law must recognize the criminalization of marital rape and establish methods to prove



the offense. This move is not just about preserving women's dignity but also about bringing about societal change and ensuring women's protection and rights. Let us look further into Legal provisions to understand this issue better.

Under section 376 of the Indian Penal Code, it is stated, "Whoever commits rape, except in cases provided for by sub-section (2), shall be punished with imprisonment for a term of not less than seven years, extendable to life, or a term of up to ten years, and shall also be liable to a fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment for a term of up to two years, a fine, or both, provided that the court may, for adequate and specific reasons stated in the judgment, impose a sentence of less than seven years."

The Protection of Women from Domestic Violence Act, 2005 includes marital rape as a form of domestic violence. Under this act, spouses have the right to approach the court and seek legal separation. Article 21 emphasizes the right to life and dignity, and the Supreme Court of India has ruled in several cases that rape violates the fundamental right outlined in Article 21.

The right to privacy is explicitly mentioned in the Indian Constitution in cases such as *Kharak Singh v. State of UP* and the *Puttuswamy* case. This right encompasses the freedom to be left alone and not subject to unwarranted intrusion. Women have the right to sexual privacy, and their husbands are not entitled to violate it at will. Marital rape not only violates a woman's physical and social dignity but also inflicts significant mental stress and depression. Women often do not feel safe in their own homes and face various forms of abuse and retaliation when they attempt to speak out.

Under the Hindu Marriage Act, Section 5(i)(b) specifies the need for consent at the time of marriage, stating that both parties must be capable of giving consent and not suffering

from any mental disorders or unsoundness of mind. The Bible also emphasizes mutual consent between partners and advises against forcefully depriving one another. Under Muslim marriage law, the age of consent is sixteen years, and in cases where the male is under twenty-one and the female under eighteen, the presence of the father, guardian, or mother is required

### ***National Crime Records Bureau's Reports***

The latest annual report from the National Crime Records Bureau (NCRB) has unveiled a troubling 4% rise in crimes targeting women in India during 2022. These offenses encompass instances of cruelty by spouses and relatives, abductions, assaults, and rapes.

According to the NCRB, reported crimes against women surged significantly from 3,71,503 cases in 2020 to 4,45,256 cases in 2022, marking a notable increase compared to 2021's 4,28,278 cases.

The report emphasized that a substantial portion of crimes against women under the Indian Penal Code (IPC) involved acts such as 'Cruelty by Husband or His Relatives' (31.4%), 'Kidnapping and Abduction of Women' (19.2%), 'Assault on Women with Intent to Outrage her Modesty' (18.7%), and 'Rape' (7.1%). The crime rate per lakh women population rose from 64.5 in 2021 to 66.4 in 2022.

Additionally, the report highlighted 13,479 cases under the Dowry Prohibition Act, with over 1,40,000 cases categorized as 'Cruelty by Husband or His Relatives' (Sec. 498 A IPC).

Despite traditionally being released by July or August each year, this year's report experienced a significant delay, becoming public only recently.

Furthermore, apart from crimes against women, the report also indicated increases in offenses against children, senior citizens, Scheduled Castes (SC), and Scheduled Tribes (ST) by 8.7%, 9.3%, 13.1%, and 14.3%, respectively. Economic offenses rose by 11.1%, corruption by 10.5%, and cybercrimes by a substantial 24.4% in 2022.

Concerning trends were observed in major cities like Delhi, Mumbai, and Bengaluru. Delhi recorded 14,158 cases of crimes against women, Mumbai saw 6,176 cases with an 80.6% chargesheet rate, while Bengaluru reported 3,924 cases with a 74.2% chargesheet rate.

States like Uttar Pradesh, Maharashtra, and Rajasthan registered the highest numbers of cases of crimes against women under IPC and Special and Local Laws (SLL), with varying chargesheet rates.

The revelations from the report highlight the pressing need for comprehensive strategies to address the alarming rise in crimes against vulnerable groups across the nation.<sup>943</sup>

#### ***Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):***

CEDAW, adopted by the United Nations General Assembly in 1979, is often referred to as the "international bill of rights for women." Article 16 of CEDAW affirms that women have the right to freely consent to marriage and that spouses should have equal rights within the marriage. CEDAW<sup>944</sup> obligates state parties to take legislative measures to address gender-based violence, including marital rape.

#### ***Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention):***<sup>945</sup>

The Istanbul Convention, adopted in 2011, is the first legally binding instrument in Europe specifically addressing violence against women. Article 36 of the Istanbul Convention acknowledges that non-consensual acts of a sexual nature within a marriage or intimate relationship constitute violence against women. It requires state parties to criminalize marital rape and provide comprehensive support services to survivors.

#### ***Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in***

<sup>943</sup> <https://www.newsclick.in/crime-against-women-india-4-ncrb-report-2023>

<sup>944</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979

<sup>945</sup> [The Council of Europe Convention on preventing and combating violence against women and domestic violence \(Istanbul Convention\)](#)

***Africa (Maputo Protocol):*** The Maputo Protocol, adopted in 2003, focuses on promoting and protecting women's rights in Africa. Article 4 of the Maputo Protocol explicitly condemns all forms of violence against women, including marital rape. It calls upon state parties to enact legislation to criminalize marital rape and provide protective measures and support services to survivors.

#### ***Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention)***<sup>946</sup>

The Belém do Pará Convention, adopted in 1994, is a regional treaty aimed at preventing and addressing violence against women in the Americas. Article 7 of the convention recognizes that violence against women includes physical, sexual, and psychological harm, including within marital or domestic relationships. It urges state parties to enact measures to prevent and punish acts of violence against women, including marital rape.

In essence, international conventions have served as crucial frameworks for addressing the issue of marital rape globally. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Istanbul Convention, the Maputo Protocol, and the Belém do Pará Convention are prominent examples of international agreements that emphasize the need to criminalize marital rape and provide support services to survivors. These conventions highlight the importance of recognizing women's rights, bodily autonomy, and the need for legislative reforms to combat marital rape effectively. As we move forward, nations around the world need to ratify and implement these conventions, ensuring that marital rape is unequivocally recognized as a crime and survivors receive the necessary support. By doing so, we can collectively work towards ending the scourge of marital rape and fostering a society that respects and upholds the rights and dignity of all individuals.

<sup>946</sup> INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN "CONVENTION OF BELEM DO PARA"

### ***The Call for Criminalization:***

- i. **Protecting Women's Rights:** One of the most compelling reasons for criminalizing marital rape is the protection of women's fundamental rights. The right to bodily autonomy, personal dignity, and the ability to give or withhold consent to sexual activity is intrinsic to every human being. Women's rights are human rights, and they do not diminish within the confines of marriage. Criminalization would affirm and safeguard these rights, ensuring that women have the same level of protection against sexual violence within marriage as they do outside of it.
- ii. **Addressing Gender Inequality:** Marital rape is a stark manifestation of gender inequality and male dominance within society. Criminalizing it sends a powerful message that no one is above the law, regardless of their marital status. It challenges traditional gender norms that have long perpetuated the idea that women are subservient to their husbands and must fulfill their sexual desires without question. A legal stance against marital rape is crucial for dismantling these deeply entrenched patriarchal structures.
- iii. **Promoting Gender Equality:** Criminalizing marital rape is a critical step toward achieving gender equality. By recognizing that women have the same rights and protections within marriage as outside it, we create a more equitable society. This shift in perspective not only benefits women but also contributes to the broader goals of social justice and human rights.
- iv. **Ensuring Accountability:** The absence of legal consequences for marital rape undermines accountability. Perpetrators often escape justice, emboldening them to continue their abusive behavior. Criminalization would hold offenders accountable for their actions and act as a powerful deterrent, reducing the prevalence of marital rape and encouraging survivors to come forward.

### ***The Impact on Women:***

- i. **Physical and Psychological Trauma:** Marital rape inflicts severe physical and psychological trauma on women. Survivors often endure physical injuries, sexually transmitted infections, and long-term emotional distress. The experience of being violated by one's spouse, in what should be a safe and trusting relationship, can lead to feelings of shame, guilt, and post-traumatic stress disorder.
- ii. **Erosion of Autonomy:** Marital rape erodes women's autonomy and agency over their own bodies. It perpetuates the harmful notion that women exist primarily for the sexual satisfaction of their husbands. This erosion of autonomy extends beyond the bedroom, impacting various aspects of a woman's life, including her self-esteem, decision-making power, and overall well-being.
- iii. **Social Stigma and Isolation:** Women who speak out against marital rape often face social stigma and isolation. They may be ostracized by their families, blamed for the abuse they endured, or labeled as troublemakers. This discourages many survivors from reporting their experiences or seeking help, further perpetuating a cycle of abuse and silence.
- iv. **Undermining Mental Health:** Marital rape has profound consequences for the mental health of survivors. The constant fear and trauma associated with this abuse can lead to anxiety, depression, and even suicidal thoughts. The societal indifference to this issue exacerbates the suffering of survivors, who often lack the support they desperately need.
- v. **Economic Dependence:** In many cases, women who experience marital rape are financially dependent on their husbands, leaving them with few options to escape the abusive relationship. Criminalizing marital rape would not only provide



legal recourse but also empower women to seek help without fearing economic ruin.

- vi. Barriers to Education and Employment: The impact of marital rape can extend to a woman's education and employment opportunities. Survivors may face disruptions in their academic or professional pursuits, perpetuating a cycle of dependence on the abuser and hampering their potential for economic independence.

### **Conclusion**

In conclusion, the criminalization of marital rape is not just a legal matter; it is a matter of human rights, gender equality, and social justice. In today's world, a woman should have absolute bodily autonomy irrespective of her marital status. It is an essential step toward protecting the well-being and dignity of women and dismantling deeply rooted patriarchal structures. The impact of marital rape on women's lives is profound, affecting their physical and psychological health, autonomy, and overall quality of life. By criminalizing marital rape, we can bring about a more just and equitable society where women are free from the threat of sexual violence within their marriages, and their rights are fully recognized and protected.

GRASP - EDUCATE - EVOLVE