



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 4 AND ISSUE 2 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 2 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-2-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)



© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserved 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/>

## MARITAL RAPE: UNVEILING THE HIDDEN PAIN

**AUTHOR** – PULAK BISEN, STUDENT AT RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB

**BEST CITATION** – PULAK BISEN, MARITAL RAPE: UNVEILING THE HIDDEN PAIN, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (2) OF 2024, PG. 14-18, APIS – 3920 – 0001 & ISSN – 2583-2344

### ABSTRACT

Marital rape is a common but sometimes hidden kind of domestic abuse that is still a major problem in the world. The abstract delves into the various aspects of marital rape, emphasizing its significant influence on victims, cultural perceptions, and legal structures. Cultural, religious, and legal hurdles continue to prevent marital rape from being reported or acknowledged, despite tremendous advancements for women's rights. The study explores the psychological, physical, and emotional trauma that survivors endure, which is exacerbated by stigma and a dearth of resources for help. It looks at the development of legal viewpoints about marital rape, comparing and contrasting jurisdictions that maintain spousal immunity with others that acknowledge it as a crime. To address this hidden suffering, the study emphasizes the critical need for comprehensive legislative reform and public education through a review of recent research, survivor accounts, and legal assessments. The study highlights the significance of lobbying and advocates for a worldwide agreement to criminalize marital rape and to establish strong support systems for victims. This concept aims to spark a paradigm change toward acknowledging and resolving this violation of human rights inside the sacredness of marriage by exposing the hidden suffering associated with marital rape.

### INTRODUCTION

According to Section 375<sup>35</sup> of the Indian Penal Code, Rape is an act in which a man engages in sexual relations with a woman without the latter's consent or in situations in which the consent is acquired through deception, fraud, or situations in which the woman is mentally ill or drunken. A type of sexual assault known as marital rape occurs when one spouse has non-consensual sex with the other. Even in a close relationship, consent is still very important. Coercion, force, or manipulation within a marriage or other similar domestic partnership constitutes marital rape. It disproves the myth that spousal relationships inherently imply consent by violating the victim's autonomy and well-being. Although societal perspectives and legal systems on marital rape differ, it is imperative to acknowledge and confront this problem in order to advance consent, dignity,

and people's general safety in close relationships. Although Section 375 provides protection for women by enacting harsh penalties, it does not include Marital Rape as a form of rape, leaving married women defenceless against abuse among their partners<sup>36</sup>.

It is important to talk about marital rape for a number of reasons. Above all, it contributes to ending the taboo around a type of abuse that takes place inside the purportedly safe haven of marriage. By bringing harmful stereotypes and misconceptions to light, society can create an atmosphere that gives survivors the confidence to speak up and ask for assistance. Moreover, breaking the myth that marriage implies automatic consent requires addressing the issue of marital rape. It encourages the idea that consent is a continuous process,

<sup>35</sup> The Indian Penal Code 1890, s 375.

<sup>36</sup> Closhemonmi Dkhar, 'An Insight into White-Collar Crimes', (2010) INDIAN J.L. & LEGAL.

irrespective of the state of a relationship. This discussion helps to promote the rights and safety of all people while also challenging cultural norms that may encourage marital violence. It also helps to change societal attitudes. Talks about marital rape can also have an impact on legal systems, resulting in changes that guarantee all parties involved equal protection under the law, regardless of their relationship. In the end, having an honest conversation about marital rape is essential to creating a society that respects individual autonomy, values consent, and places a high priority on everyone's well-being. The issue of marital rape, which is extremely upsetting and widespread, is frequently obscured by prevailing myths and societal attitudes that support the continuation of this horrible crime. Though awareness of sexual violence is increasing, there is a disturbingly common misconception that marriage grants an unassailable right to sexual access, which disproves the idea of consent in a married relationship. The deep societal expectations and cultural norms that support this harmful misconception make it extremely difficult to confront and end marital rape. Because of the stigma associated with marital rape, survivors of this crime often suffer in silence out of fear of being judged, stigmatized, or because they think talking about sexual violence would upend the institution. The prevailing myths and attitudes in society regarding marital rape highlight how urgently comprehensive efforts to refute and alter these deeply embedded beliefs are needed. By promoting candid communication, enacting legislative changes, and offering assistance to those who have experienced sexual assault, society can endeavour to break down the obstacles that continue marital rape and establish a mindset that values everyone's consent, dignity, and safety in close relationships. A collective effort aimed at challenging deeply rooted norms is the only way significant progress toward eliminating the evil of marital rape can be made.

## LEGAL FRAMEWORK

The legal environment surrounding marital rape is a complicated one, shaped by the interplay of changing social attitudes, cultural norms, and the need to uphold individual rights. In the past, marital rape was frequently disregarded or overlooked because it fell under a legal system that valued marriage's sanctity over people's right to their own bodies. But over the past few decades, there has been a noticeable change in the legal landscape, with many jurisdictions now recognizing the seriousness of marital rape and implementing laws to combat this horrible crime<sup>37</sup>. Although praiseworthy, this shift is not without difficulties as legal systems attempt to define and prosecute cases of marital rape while striking a balance between individual liberties and social norms associated with the institution of marriage. While there has been progress, there are still large differences in the ways that different legal systems handle marital rape. Certain areas have laws that specifically criminalize marital rape, mirroring those that deal with non-marital sexual assault. These legal systems place a strong emphasis on consent and reject the idea that marriage shields a person from prosecution for sexual assault. There are various legal reforms in this particular arena. The Supreme Court in *Independent Thought v. Union of India*<sup>38</sup> and in 2022 the High Court in *RIT Foundation v, Union of India*<sup>39</sup> held that the part of Exception 2 to section 375 which excused marital rape of minors between the ages of 15-18, was unconstitutional, which means that the term 15 years in the exception now needs to be read as 18 years. Currently, there are no criminal penalties for marital rape when a wife is over 18 years old. Further, the rulings were challenged. Activists and legal scholars say that the non-recognition of marital rape is a blatant violation of women's rights, and contradicts the fundamental rights of liberty, equality, and dignity granted to citizens by the Constitution of

<sup>37</sup> Ryan RM, "The Sex Right: A Legal History of the Marital Rape Exemption" (1995) 20 Law & Social Inquiry 941

<sup>38</sup> *Independent Thought v. Union of India*, (2017) 10 SCC 800.

<sup>39</sup> *RIT Foundation vs Union of India* (2022 SCC Online Del 1404).

India<sup>40</sup>. Therefore, various legal reforms have taken place in order to deal with the issue of marital rape in a more liberal way.

### **PREVALENCE AND IMPACT**

The expectations and cultural norms surrounding marriage have an impact on the frequency of marital rape. Reporting instances of marital rape becomes a difficult task for survivors in societies characterized by inflexible gender roles and unequal power dynamics. The normalization of gender norms can contribute to a culture of silence that makes it harder for people to speak out against rights violation that occur in the ostensibly safe haven of marriage. Furthermore, the survivors get discouraged to report the crime. Despite high prevalence rates, sexual violence has received limited attention when compared to physical and psychological violence by a partner or ex-partner<sup>41</sup>. Understanding the true prevalence of marital rape is significantly hampered by its covert nature. Many survivors suffer in silence out of fear of being judged by society, being blamed as victims, or facing more abuse from their abusive partners. The widespread false belief that marital consent is implied by default sustains this silence, a perilous illusion that impedes justice and feeds the abuse cycle. Extensive legal frameworks and meticulous research methods are essential for exposing the true extent of marital rape, shattering myths, and questioning social mores that unintentionally support the continuation of this pernicious issue. A more comprehensive shift in society is required to address the incidence and consequences of marital rape. This shift should focus on tearing down harmful gender norms and promoting a culture of consent in all relationships. The idea of spousal entitlement and ownership is perpetuated by deeply rooted attitudes that must be challenged through

education and awareness campaigns. The myths surrounding marital rape can be debunked by society by encouraging candid discussion and understanding of sexual autonomy. In order to create safe spaces for disclosure and healing, survivors must also have easy access to support networks and resources. Helplines, counselling services, and community-based initiatives are essential in equipping survivors with the skills they need to deal with the complicated fallout from marital rape. The prevalence and effects of marital rape require immediate attention from legislators, the public, and medical professionals. To replace the stigma, we must challenge myths, question cultural norms, and change legislative frameworks. This will help end the stigma, support survivors, and establish a society where marital rape is categorically denounced and eliminated through comprehensive efforts.

### **COMBATING MARITAL RAPE IN INDIA**

In India, the fight against marital rape is an urgent social issue that requires a thorough and coordinated effort. The need for legal reforms to close the existing legislative gaps is at the forefront of this conflict. In India, marital rape is protected under specific exemptions, so it is not expressly illegal. In order to bring about change, a determined campaign to criminalize marital rape as well as a critical analysis and revision of current laws pertaining to sexual violence within the context of marriage must be launched. This legal component is essential to creating a framework that guarantees everyone, regardless of marital status, equal protection under the law. It is essential to simultaneously address the deeply embedded societal norms and attitudes regarding gender, marriage, and sexuality. A starting public awareness campaigns to raise awareness of the prevalence and repercussions of marital rape is a crucial tactic. These campaigns can reach a large audience by utilizing a variety of media platforms, including radio, television, and social

<sup>40</sup> Nalini Sharma, “New Bills Propose Stricter Laws on Rape but Marital Rape Still Not an Offence” (India Today, August 11, 2023) <https://www.indiatoday.in/law-today/story/centre-criminal-law-bills-stricter-punishment-rape-marital-rape-not-offence-2419905-2023-08-12>

<sup>41</sup> Sophie Boucher, Jacinthe Lemelin and Lynn McNicoll, “Marital Rape and Relational Trauma” (Sexologies, April 1, 2009) <https://doi.org/10.1016/j.sexol.2009.01.006>

media<sup>42</sup>. This helps to break down cultural taboos surrounding the issue and promote a collective understanding of it. Furthermore, it is imperative that curricula in schools and colleges include comprehensive sex education programs. These programs can help bring about a cultural shift that opposes the acceptance of marital rape by instilling values of consent, healthy relationships, and respect for individual boundaries at a young age. Strong counselling and support services must be established in addition to legal and educational efforts. Marital rape survivors frequently confront particular difficulties, such as psychological trauma and social shame. In addition to offering psychological support, these services ought to provide legal advice and help in navigating the difficulties involved in reporting and pursuing justice. Crucially, cooperation between governmental agencies, non-governmental organizations, and civil society is needed to combat marital rape. Involving these stakeholders in the process guarantees a more comprehensive and long-lasting approach by combining resources and knowledge to handle the issue's complexity.

### **CONCLUSION**

In summary, the problem of marital rape is a pervasive social issue that necessitates immediate attention and coordinated efforts from a range of sectors. As we explore the nuances of this problem, it becomes clear that preventing marital rape necessitates a multipronged strategy that takes into account social, legal, and educational factors. The unseen suffering experienced by those who have survived marital rape is an unavoidable fact that demands our shared commitment to enacting meaningful change. Advocate for criminalizing marital rape and reforming existing laws in India. Challenge exemptions and ensure equal protection for survivors. Legal reforms deter and condemn consent violations,

reshaping societal norms and expectations regarding marital relationships. However, legal changes alone are insufficient. Education plays a pivotal role in challenging and transforming ingrained attitudes towards gender, marriage, and sexuality. Comprehensive sex education programs, integrated into school and college curricula, are essential for fostering a culture of consent, communication, and mutual respect. These programs should not only address the physical aspects of relationships but also delve into the emotional and psychological dimensions, emphasizing the importance of emotional well-being and individual agency. By instilling these values early on, society can lay the groundwork for a future generation that rejects the normalization of marital rape and understands the significance of consent within intimate relationships. The hidden pain of marital rape requires the resilience of survivors, who inspire change and seek justice. Society must listen, empathize, and act, and the pain can only be fully addressed when survivors are empowered and supported. Ultimately, a society's dedication to justice, equality, and the welfare of its members is reflected in the battle against marital rape. Together, we can push for legislative changes, confront deeply rooted beliefs, and establish strong support networks in order to bring about the day when the silent suffering caused by marital rape is not only exposed but also actively eliminated. By doing this, we help to build a society in which everyone can live without having to worry about intimate partner violence or suffer from its trauma, even if they are not married.

### **REFERENCES**

1. The Indian Penal Code 1890, s 375.
2. Closheimonmi Dkhar, 'An Insight into White-Collar Crimes', (2010) INDIAN J.L. & LEGAL.
3. Ryan RM, "The Sex Right: A Legal History of the Marital Rape Exemption" (1995) 20 Law & Social Inquiry 941

<sup>42</sup> "Marital Rape - Criminal Justice System in India And Initiative Steps Towards Exigency" <https://www.legalserviceindia.com/legal/article-1287-marital-rape-criminal-justice-system-in-india-and-initiative-steps-towards-exigency.html>

4. Independent Thought v. Union of India, (2017) 10 SCC 800.
5. RIT Foundation vs Union of India (2022 SCC Online Del 1404).
6. Nalini Sharma, "New Bills Propose Stricter Laws on Rape but Marital Rape Still Not an Offence" (*India Today*, August 11, 2023) <https://www.indiatoday.in/law-today/story/centre-criminal-law-bills-stricter-punishment-rape-marital-rape-not-offence-2419905-2023-08-12>
7. Sophie Boucher, Jacinthe Lemelin and Lynn McNicoll, "Marital Rape and Relational Trauma" (*Sexologies*, April 1, 2009) <https://doi.org/10.1016/j.sexol.2009.01.006>
8. "Marital Rape - Criminal Justice System in India And Initiative Steps Towards Exigency" <https://www.legalserviceindia.com/legal/article-1287-marital-rape-criminal-justice-system-in-india-and-initiative-steps-towards-exigency.html>

