

MARITAL RAPE IN INDIA: A CRITICAL ANALYSIS

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I. Abstract:

This paper explores the problem of why marital rape continues to remain outside the realm of criminal offenses in India, scrutinizing its multifaceted historical, cultural and legal origins. The Indian legal system, through Section 375 of the Indian Penal Code, does not shun the dominates patriarchal society where husbands are allowed free sexual access to their wives if they are overage. This framework is built on colonial black laws. The paper analyzes India's contemporary position within this framework alongside the attempts towards more progressive reforms in UK, USA and South Africa. Through multiple illustrative judicial case studies, the paper highlights systemic gaps in the judicial system and the sociocultural acceptance of rape in marriage which perpetuate oppression and discrimination against women on grounds of gender violence, bodily autonomy, equality, privacy, and equality. In addition, the paper also examines other "weaker" opposing arguments which emphasize the need to protect marriage from destabilization. The conclusion argues in favor of significant changes to the law, strong action at the societal level, and educational campaigns which redefine consent and dismantle patriarchal privilege in marriage.

II. Introduction:

Does marriage give a license to marital rape in India? Marital Rape or Spousal Rape is an act of sexual intercourse with one's spouse without the spouse's consent. Imagine being struck in a marriage where your consent, including the right to say 'no' is being ignored, this is nothing but the reality of all women across the map of few countries including India. India has almost advanced in every field, yet sexual violence occurred into four walls of matrimonial home is considered private, family matter and is not accepted as a crime by the public institutions like the courts. Marital rape, is considered as crime in most of the countries across the globe, except for 36 countries, including India where the cultural and societal norms see women subordinate to their husbands, refuses this particular act to be criminal; and offering laws and protecting the rights of those who are out of this marriage institution. Despite growing

calls for reform, the legal and cultural understanding in India regarding marital rape is still being complex and unresolved. This paper delves into the historical cultural, and legal factors that contribute to the continued acceptance of marital rape in India. It recommends legal reforms that can ensure protection of women's rights within marriage. By approaching this issue, this paper aims to contribute to the broader discourse on gender equality and justice for women in India.

III. Historical Context

In the course of history, it was considered that having sex without the consent of wife was husbands right. It completely asserts that once married, a women's identity and her legal rights become intertwined to her husband. It was therefore thought that a husband has full sexual autonomy over his wife. And hence, this would be one of a reason for India to not criminalizing marital rape. It is said that the Soviet Union was

the first to criminalise marital rape in 1922 followed by many Scandinavians and Europeans who did the same. Numerous cases asking for the criminalization of marital rape has been recently filed at Delhi high court. In India, rape outside of marriage is a crime, but rape within marriage is not necessarily considered criminal. This can lead to underreporting of sexual intimate partner violence. The historical context of marital rape lies in the colonial era, cultural and societal norms which shows the patriarchal attitude in the society. Which believed that a woman is a property of father before marriage and her husband's property post marriage, and within that it's also believed that the consent of women comes within the marriage and she is supposed to fulfill all the necessity of her husband including his sexual desires. And hence, it was assumed that a man cannot rape his own wife as she is his possession. The Indian Penal Code (IPC) 1860 drafted during the British rule was highly influenced by the societal and cultural norms that includes, Section 375 which criminalizes offence of rape but keeps marital rape out of its scope. The section 375 of IPC defines rape which states that "sexual intercourse by a man with his wife, the wife not being under 15 years of age is not rape." This provision clearly defines that a women's consent is subordinate to that of her husband. This historical mindset of patriarchal society in India has somewhere contributed in shaping the legal provision for marital rape in India.

IV. How Marital Rape is viewed in India:

In India marital rape is a very delicate and a taboo subject. It is seen as an infringement of a sacredness of marriage where the subject between husband and wife should remain private. Many people in India think that a women should fulfill all her marriage obligations, which includes having sex with her spouse. As a result of patriarchal worldview marital rape is frequently normalized, and many of the women are unaware that they have a right to reject their husbands' advancement of sexual manner. And hence, marital rape is not

yet considered to be crime in India. India is one of the 36 countries that have not considered marital rape as a crime, despite several countries in the world have officially acknowledged it as a crime. Rape in any form whether marital or non-marital should be recognize as a crime. According to the National Family Health Survey (NFHS-4) conducted by the Ministry of Health and Family Welfare in 2015-16 it resulted that 31% of women aged 15-49 ever married have experienced physical, emotional and sexual violence at least for once in their lifetime. However, the survey didn't portray the marital rape questions.

"The protection of women and children is a priority but condemning every marriage as a violent and every man as a rapist is not advisable", said union minister of women and child development, Smriti Irani, in response to Communist Party of India (CPI) member of parliament (MP) Binoy Viswam's on the supplementary query raised on the issue of marital rape in Rajya Sabha. As a coin has it's two sides i.e. the pros and cons; many people believe that if marital rape is legalized and punishment is introduced then the cases where the man are being falsely trapped will somehow increase. As in India men can be easily trapped into false allegations due to too much safeguard provided to the women it is proved by the classic example of Ayushi Bhatia Honey trapping. Ayushi Bhatia was arrested by Urugram police for filing 8 rape cases against 8 men in one year. But here the question arises is that Are women supposed to shut their mouth and tolerate such a terrible act done by her partner? A women should not be denied of her legal right against this atrocious act of marital rape. It is found that more than 150 countries have criminalized marital rape but India still lacks to do so due to some cultural, societal and due to the patriarchal mindset of the society. There are numerous cases filed regarding marital rape but still it's not a crime, in short Marital Rape does not exist?

V. Marital rape status in India:

“He who does not prevent a crime when he can, encourages it”. Seneca the Younger.

In the very similar manner India is the one who encourages marital rape in India and has witnessed several cases regarding the same yet still fails to accept it as a crime. A survey done by the National Family Health Survey Statistic of domestic violence according to most recent fifth round of the National Family Health Survey (NFHS-5), 32% of Indian women ever married have experienced physical, sexual or emotional abuse at the hands of their spouses. Additionally, it was discovered that 25% of married women in the 18-49 age range who have experienced spousal, physical or sexual violence report having physical wounds with 7% reporting eye wounds, sprains, dislocations, or burns and 6% reporting deep wounds, broken bones, broken teeth, or any other serious wounds.

The Indian government keeps statistics regarding the spousal violence. Furthermore, 5.4% of women in this category reported having engaged in marital rape according to the most recent National Health and Family Survey for 2015-16. “The form of sexual violence most commonly reported by women was that their husband used physical force to have sexual intercourse when they did not want to”, says the survey.

The following are some findings of the most brutal cases due to marital rape in India:

A. Case 1: The Chhattisgarh Acquittal (2017-2025)

A woman died within hours of suffering forced “unnatural sex” in Chhattisgarh in 2017. A post-mortem and her dying declaration confirmed she had incurable injuries. As result, her husband was convicted in 2019 under sections 304 (culpable homicide), 375 (rape), and 377 (unnatural offences) of IPC. But in 2025, the Chhattisgarh High Court overturned the ruling, citing the marital rape exception in Section 375. Justice Narendra Kumar Vyas argued that if

marital rape is not a crime, then the husband should not be put on a trial even for acts resulting in death. This case triggered the outrage nationally, bringing to light the gap between legislation and social justice.

B. Case 2: The Karnataka High Court's Progressive Stance (2022)

In a positive development, the Karnataka High Court, in 2022, controversially permitted filing charges of raping a wife against the husband, dismissing the marital exemption. The ruling was described as “an inequality that destroys the soul of the Constitution.” While the husband's appeal is pending in the Supreme Court, they have provided hope for legal responsibility.

C. Case 3: Madhya Pradesh's Regressive Ruling (2021)

Based on an FIR that was filed against the husband for ‘non-consensual anal sex’, a Madhya Pradesh judge quashed a case stating that the act was not “unnatural” in the context of marriage. This reasoning was based on archaic understanding of Section 377 (which was only decriminalized in 2018) and deepened patriarchal entitlement of marriage relations.

D. Case 4: Maharashtra's Anticipatory Bail (2021)

Anticipatory bail was granted to a Maharashtra man who was convicted for raping his wife, resulting in her being paralyzed. The courts during the pre-trial showcased leniency which underscores the addition of rape laws in marriage – even in such dire scenarios, perpetrators manage to escape.

This illustrates yet again a flawed judicial system which is bursting with contradictory nature in which a single judge's interpretation is what drives their decision making, meaning there is very little, if any, reasoned legal framework.

VI. Legal Loopholes, social injustice, comparative analysis and legal change proposals:

A. A detailed analysis on Section 375 of IPC

The offense of rape according to section 375 of the Indian Penal Code (IPC) 1860 highlights the particular conditions in which sexual intercourse is performed and is categorized as 'rape' in legal terms. However, within the peculiar exception of exception 2, 'marital rape' does not find justification as a crime under this loophole. Exception 2 of this provision overrides the basic tenet of law regarding nonconsensual sex by a man onto his wife, provided she is above the age of eighteen. The lapse in legislation has drawn severe condemnation, activism, and debate all over the country. In addition to upholding unquestioned male dominance over women, this legal bypass blights fundamental rights of women as guaranteed in the Constitution of India, as well as under international law. This essay focuses on three primary themes: the legal boundaries set by section 375, the socio-historical context of the rape within marriage exception, and the outline of women's rights infringed under this backward clause.

Section 375: Legal Framework Rape is defined in Section 375 of the IPC as sexual intercourse with a woman under the following conditions:

1. Against her will.
2. Without her consent.
3. With consent obtained through fear, fraud, or misconception of fact.
4. With consent given under the belief that the man is her husband.
5. With a girl under 18 years of age, regardless of consent.
6. When she is unable to communicate consent (e.g., unconsciousness, intoxication).
7. By a person in a position of authority or trust (e.g., police officer, doctor).

The punishment for rape under Section 376 ranges from a minimum of 10 years to life imprisonment, with stricter penalties for

aggravated cases, such as gang rape or rape of a minor.

Exception 2 to Section 375 states:

"Sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, is not rape."

This clause effectively legalizes non-consensual sex within marriage, as long as the wife is an adult. Although this exemption was modified to an age limit of 18 instead of 15 years in 2017 (*Independent Thought v. Union of India*), it still exists for wives aged 18 and above. For all intents and purposes in India, marital rape is not classified as a crime, except when a woman is in a minor designation.

B. Historical and Societal Context

The historical context and the social structure which the marital rape exception in Section 375 stems from is reflective of a colonized mindset that is deeply rooted in patriarchy viewing women as chattels of the men underneath them. Implemented in 1860 IPC was based on British colonial rule, which brought with it Victorian ideas of marriage that considered it as annihilation of a woman's freedom, where a wife's consent is taken to be a given forever after a marriage is contracted. The legal position encapsulated in the primitive maxim of 'a husband cannot be guilty of rape against his lawful wife' deprived women of all their freedoms, turning them into mere skins without will.

Following independence, India adopted many colonial processes including the exception of marital rape. Subsequent governments have languished the exemption in the name of "preservation of the institution of marriage" and cultural relativism. For example, in 2013, the Justice Verma Committee—a panel set up after the Nirbhaya gang rape incident—suggested that marital rape should be punishable by law. The government, however, did not accept the suggestion claiming that it would 'destabilize marriage and result in men being 'miserably' victimized.

Such sociological perceptions only add to the indifference shown by the law. 30% of women within the Indian population accepted spousal violence amongst women as justified in a 2019 National Family Health Survey (NFHS-5), which included forced sexual intercourse. Such attitude towards violence reflects the normalization of marital rape while highlighting gender inequalities as well as the disregard for women's autonomy over their own bodies.

C. In the context of India's laws, the failure to address marital rape results in the violation of several fundamental constitutional as well as human rights of women which are:

1. Right to Bodily Integrity and Sexual Autonomy (Article 21)

The Supreme Court of India, in the landmark judgement of Justice K.S. Puttaswamy v. Union of India in 2017, recognized the right to life and personal liberty as encompassing dignity, privacy, bodily integrity, and self-governance. Anything from forced gold digging to marital rape contradicts these principles in that it subjugates a woman's autonomy over her body. Such actions being legal suggests that consent within marriage does not exist and a woman is merely an object to be used at her husband's discretion for sex whenever he desires.

2. Right to Equality (Article 14)

Inhibitions of article 14 of the Indian Constitution provides an exception regarding unequal treatment towards the law and legally states that all citizens must be considered equal, however, Exception 2 makes a distinction... and a discriminatory one at that. A man raping an unmarried woman attracts heavy legal arms but if a married woman is raped by her spouse, then magically the act becomes legal. That alone daylight gender discrimination and violates the Indian constitution equality.

3. Right Against Cruelty (Section 498A, IPC)

Although Section 498A does account for the violence of a husband or in-laws against a woman as a crime, it does not cover cases of

sexual violence. While the Protection of Women from Domestic Violence Act (PWDVA), 2005 covers domestic rape under abuse, it confines its approach to civil consolation in the form of protection orders, and not criminal action. This denies survivors some meaningful approach to justice.

4. Right to Health

The implications of marital rape inflict serious bodily and psychological harm, including injury, trauma, unwanted pregnancies, and mental suffering. Sexual violence is, as classified by the World Health Organization (WHO), a matter of public health concern. The law's tolerance of marital rape mitigates women's susceptibility to greater health risks.

5. Right to Privacy

In Puttaswamy, the Supreme Court protected privacy which is a fundamental right that includes personal choices such as sexual discretion. Each forced intercourse within marriage infringes unapologetically into the woman's most intimate space which utterly violates her most basic right.

6. International Human Rights Obligations

India signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which places an obligation on state parties to eliminate all forms of violence against women, domestic violence, including marriage rape (CEDAW General Recommendation No. 35). The UN Committee on CEDAW has repeatedly criticized this exception placed by India as a breach of woman human rights.

D. Legal and Societal Held Views

The institution of 'marital rape exception' perpetuates a culture of perpetration. Survivors experience immense sociological barriers to reporting due to stigmatization, ignorance of the law, and the very real risk of reprisal. Even when cases are brought under allied laws like domestic violence, the lack of a specific criminal provision altogether nullifies the degree of liability.

Responses have been judicially inconsistent. The Supreme Court of India, in *Independent Thought v. Union of India* (2017), recognized and criminalized rape within marriage for minors aged 15 to 18 but did not touch adult marital rape. In 2022, Delhi High Court delivered a divided judgment on Exception 2 with one judge supporting its removal and another defending it. It now awaits the Supreme Court.

E. Comparative Legal Systems

Widespread recognition and acceptance of women's bodily autonomy and gender equality is evident in the ever-growing claw back of marital rape across the globe. Over 150 countries, including USA, UK, Australia and South Africa have removed the exemption of marital rape. India can learn from the comparative analysis of the growing set of countries that offer progressive reforms in amendments aligned to human rights.

1. United Kingdom

The UK removed the exemption for marital rape in 1991 (*R v R* [1991] UKHL 12), asserting that marriage does not equate to unconditional consent for sexual relations. In shifting away from patriarchal legal precedents toward a rights-driven framework, this decision established a new path. The Sexual Offences Act of 2003 further emphasized that consent must be explicit in all sexual encounters, including within marriage.

2. United States

In the USA, all 50 states recognized marital rape as a crime by 1993. Judicial and legislative action lifted the exemptions in states such as New York and California. The Violence Against Women Act, passed in 1994, enhanced protective measures, acknowledging that the institution of marriage does not eliminate the requirement for consent.

3. South Africa

Gender equality is entrenched as a basic right in South Africa's post-apartheid Constitution (1996). The Domestic Violence Act of 1998

specifically prohibited marital rape, with the Constitutional Court ruling in *S v. Baloyi* (2000) affirming, "the right to dignity and bodily integrity...which cannot be suspended within marriage."

4. Nepal and Bhutan

Nepal (2002) and Bhutan (2004) divorced women from marital rape, defying cultural relativism inaction even in South Asia. Nepal's Supreme Court decision in *Sapana Pradhan Malla v. Government of Nepal* (2002), deemed the exemption unconstitutional.

F. Counterarguments and Rebuttals

The following arguments opposing the criminalization of marital rape, which deny consideration of legal and moral frameworks, are often cited:

1. "It Will Destabilize the Institution of Marriage"

Critics argue that false accusations and spike in divorce rates will follow the criminalization of marital rape. Nonetheless, the UK and Canada didn't witness an explosion of spiteful cases after criminalization. Even in India's case, the anti-cruelty law 498A has been shown to be misused at a relatively low rate of 2-5% based on NCRB data. Moreover, there are substantial safeguards to prevent misuse of these laws.

2. "Marital Rape Is a Private Matter"

This assertion is committed to the blurring distinction between private and personal violence. The apex court in the country *State of Maharashtra V. Madhukar Narayan Mardikar* (1991) ruled that privacy is not a blanket shield to criminal activity. This conveyor also does not stand in the realm of international law- CEDAW forces states to act on violence, even if it is termed 'private' and 'gender' based.

3. "Cultural Specificity"

Some lawmakers maintain that the Indian culture does not support the recognition of marital rape as a crime, and even as statutory. However, the Indian Constitution (section 14, 15, 21) alongside the judiciary has time and again

granted supremacy to individual rights over backward traditions. While acknowledging the custom of triple divorce ("talaq"), the Supreme Court of India *Siehra Bano V. Union* noted and struck down this derogatory practice stating that personal law should be aligned with fundamental rights.

4. "Substituting Laws Will Suffice"

With the existence of the 498 A IPC along with PWDVA provisions which deal with issues of domestic violence, there is marked absence in providing separate punishment laws for marital rape. Civil Laws leveraging protection does little to stop the violence while failing to capture the heinousness of rape.

G. Legal and Social Change Proposals

Inconsiderable changes cannot solve the problem of abolishing Marital rape, thus India needs to look at it from a framework based on:

1. Changes in Legislative Policies

Modification in Exemption 2 of Section 375 IPC: This needs to be done to ensure cross domestic and international treaties can be met to uphold legal values.

Appropriate Consent Policies: Just like the Justice Verma Committee instructed, the definition of rape needs to be shifted to agreeing willingly.

Reinforcement of Existing Structures: More focus should be placed on covering surviving victims as well as protecting them from being prosecuted, giving them the needed support, and changing policing to trauma informed practices.

2. Aggressive Prosecution

Exception 2 should be scrapped by the Supreme Court as the ultimate custodian of rights. Patriarchal norms have systematic structures as laws which remain in place until court orders make them abandon them. Shining a Joseph v United India case of 2018 brought forward the de-adultery legislation which is a good example

of this and shows how capable the court actually is.

3. Social Involvement Together with Education

Gender Empowerment Policies: A strong focus on changing target surgery victim mentality and encouraging possible victim procedures for doctors, policemen, and judges.

Sustain media attention for the cause aiming attention toward conversations around abuse and consent, making the issue prevalent in every walk of life.

4. Support for Survivors

Crisis centers, hotlines, and legal services require broader access. The Nirbhaya Fund established in 2013 should focus on funding for survivors of marital rape.

5. Engage Men and Boys

UN Women's HeForShe and similar programs can redefine and challenge toxic masculinity, as well as notions of marital "entitlement."

The absence of legislation against marital rape in India promotes a culture of silence and oppression, infringing upon women's dignity, equality, and autonomy. Exception 2 cannot withstand scrutiny from comparative jurisprudence and constitutional logic. A change in society, law, and judicial attitude is urgently required to remove this outdated provision.

Accepting marital rape as a crime is the only way for India to guarantee that a woman's right to say "no" remains non-negotiable, regardless of whether she is married or not.

VII. Conclusion:

In conclusion, the persistence of the marital rape exemption in India reflects deeply entrenched patriarchal norms that have long subordinated women's autonomy and bodily integrity within

the private sphere of marriage. This paper has demonstrated that historical precedents—rooted in colonial and cultural ideologies—continue to influence contemporary legal

frameworks, notably through the flawed provisions of Section 375 of the Indian Penal Code. These legal lacunae not only deny married women their fundamental rights to dignity, equality, and personal security but also perpetuate a culture of silence where abuse is normalized and survivors are left without adequate recourse.

Comparative analyses with jurisdictions that have abolished the marital rape exemption further underscore the necessity for legal reform. By aligning India's laws with international human rights standards and reorienting societal perceptions of marriage, the state can begin to dismantle an archaic system that treats non-consensual marital intercourse as a private matter rather than a serious violation of human rights. Crucially, reform must be complemented by robust support systems—ranging from improved investigative and judicial practices to educational initiatives that engage communities in redefining gender roles and consent.

In the end, dealing with marital rape in India is a social issue and a legal one. Change must occur in all aspects; society has to rethink the institution of marriage as well as gender roles to integrate honor, consent, and equality into relationships. A woman, regardless of her being married or not, must have the right to control her body, and this can only be done after implementing robust legal changes alongside creating a culture that openly rejects sexual violence.

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