

Marital Rape Status in India

Muskan Sharma¹, Dr. Sonia Rajoria²

¹LL.M Student In Criminal Justice System, 2nd Semester, Gitarattan International Business School

²Assistant Professor, Gitarattan International Business School

ABSTRACT

This research paper critically analyzes the legal and societal dimensions of marital rape in India using Indian jurisprudence as a framework. The primary objectives are to evaluate the evolution of women's rights under Indian law, examine the laws now in place regarding rape, and highlight the distinctions between marital rape or the legal definitions. Using a doctrinal research technique, the study demonstrates that current matrimonial laws are inadequate to prevent marital rape.

According to the research, marital rape should be included as a separate criminal offense in the Bharatiya Nyaya Sanhita (BNS) 2023 because the current remedies under Section 85 of the BNS and the Security of Women Against Domestic Violence Act (DV Act) of 2005 are inadequate.

The research recommends significant reforms, including the elimination of sentencing leniency based on marital status and the development of specialized forensic processes to handle problems with evidence. It also emphasizes the need for marital rape to be explicitly acknowledged as grounds for divorce and calls for uniform statutory regulations to prevent variances among jurisdictions. The report also highlights the importance of hiring more female police officers and expanding sensitivity training to improve the way such events are handled, as well as the value of societal awareness and educational initiatives that foster equality and respect from a young age. It ends by advising the judge to read laws with a broader humanitarian perspective in order to appropriately uphold justice.

Keywords: Marital Rape, Security of Women against Domestic Violence Act, Bhartiya Nyaya Sanhita, Crime, Criminal Offence, Rape, POCSO, marriage, potential misuse.

INTRODUCTION

Rape by a victim's spouse is referred to as marital rape. Sexual intercourse or sexual penetration without consent is still the definition of rape under the BNS, just as it was in the IPC. Therefore, demonstrating lack of consent is a necessary component in order to prove rape. There are now 36 nations in the globe where marital rape is not considered a crime¹. Marital rape is used as a basis for divorce rather than as a criminal offense in several countries, including India. Section 85 of the BNS, which addresses cruelty resulting from the husband's deviant sexual behavior, is currently the sole vague legal remedy available to women. However, the penalty is less harsh than it would be for regular rape or, possibly, its more serious variant, marital rape, and this section is still highly subjective and vague. Therefore, the only legal remedies accessible to married women in India towards non-consensual sex are civil lawsuits brought under the DV Act or Section 84 of the BNS, which addresses cruelty perpetrated against a woman by a husband or his kin.

¹ Marital Rape in India: 36 countries where marital rape is not a crime, India Today, Mar. 12, 2016.

"Implied Consent," a model definition for marital rape, is used in Indian law. When a man & woman enters the institution of marriage, there is an unquestionable presumption of consent. It is assumed that when two people get married, they consent to having sex. The second exemption under Section 63 of the BNS shows that marital rape is de facto instead of de jure in India. Forced sexual assault in marriage is only prohibited by Section 63 Exception 2 if the victim is under the age of 18. Nonetheless, in the *Independent Thought v. Union of India case*², the Supreme Court ruled that coercive sexual assault in marriage is illegal when the woman is under the age of 18. Since neither the legislative nor judicial branches consider husband rape to be a crime, domestic sex abuse is accepted and excused in India. The exception provision under Section 375 of the IPC was partially invalidated by the Court. Having sex with a kid less than eighteen is prohibited by the Protection of Kids from Sexual Offences Act, 2012 (POCSO). But if a girl is married between the age range of fifteen and eighteen, the exemption clause permits this. The Court stated that it was completely illegal to treat the girl differently based on her marital status. This was due to the fact that marriage was not a rational classification. However, the Court was careful to point out that the ruling did not apply to adult marital rape³. The Bench stated during the petition hearing that marital rape was not a crime because the Parliament had discussed it and determined that it was not.

According to the National Family Health Survey's 2015–16 report, about 31% of married women reported having been the victim of physical, emotional, or sexual abuse from their spouses, with physical abuse being the most common type⁴. According to a statistics research, ordinary Indian women are 17 times more probable than other women.

1.1 IDEA OF CONSENT

The key factor in deciding whether a sexual act qualifies as rape is consent. Consent provided under false belief of a significant fact is deemed invalid under Section 28 of the Indian Penal Code (IPC), particularly if the person doing the conduct knows or has cause to suspect that the belief is incorrect. Three essential components can be used to understand sexual consent. An individual must first be willing to perform the act. Second, they must possess the mental capacity to verbally or nonverbally communicate their willingness. Third, in order to guarantee mutual consent, both partners must be able to decipher these signs.

One of the most important components of a sexual relationship, especially in marriage, is consent. Understanding what constitutes consent is crucial to comprehending the legal definition of rape. Indian law states that penetration, regardless of depth, is sufficient to qualify as rape; full hymen rupture or penetration is not necessary.

According to Section 63 of the IPC, a male is considered as having committed rape in six distinct situations:

- a) If he has sex with the woman against her will.
- b) If he has sex with her without getting her permission.
- c) If he uses threats of harm or death to get her permission.
- d) If she consents to sexual relations with him and she thinks he is her legal husband.
- e) If he gets approval from a lady who is unable to comprehend the repercussions because she is drunk

² 2017 INSC 1030

³ Deya Bhattacharya, SC Says Marital Rape Can't be Considered Criminal: Tradition Doesn't Justify Assault, Child Marriage, Firstpost (India) October 11, 2017.

⁴ From Consent to Coercion: Decoding Marital Rape Laws in the Indian Context (<https://www.lead-initiative.org/blog/consent-coercion-decoding-marital-rape-laws-indian-context>)

or mentally ill.

- f) Subject to whether she gives her consent, if he has sex with a female younger than eighteen.
- g) When she can't express her permission.
- h) Although rape is broadly defined by these rules, Indian law treats marital rape as an exemption. Unless the married couple is divorced and the wife is less than eighteen, consent is assumed to be a part of marriage. According to the J.S. Verma Report, there is no presumption of consent just because a marriage exists. Practically speaking, nevertheless, the judiciary will undoubtedly consider a certain threshold of force when addressing consent-related issues. There are three approaches to criminalizing marital rape while treating consent. The first is to assume consent and then place the onus of proof on the victim. The accused is required to prove consent in order to avoid the second presumption of lack of consent. The third would include creating a system specifically for marital rape cases, which will necessitate a revision of current evidence law standards.

MARITAL RAPE AND ITS CONSTITUTIONAL PROVISIONS

Since it is generally assumed that a marriage entails the wife giving her agreement to her husband throughout the matrimonial matters, marital rape is not considered a crime. Marriage is regarded as a holy institution that serves as the cornerstone of our culture. The State is reluctant to encroach on this sensitive area since it is seen as quite personal. This is to protect citizens' privacy, which would be violated if the state were to intrude in this area. Therefore, no two people are forced to get married or get divorced by the state. But even in some particular cases, it might be troublesome when the State refuses to enter a private zone.

According to Articles 14 and 21 of the Indian Constitution, marital rape also constitutes a violation of a woman's fundamental rights. A woman's fundamental rights are violated when marital rape is not made a crime. Despite the fact that marital rape takes place in a private area of a marriage, the state has an obligation to pierce this private area. When a woman is raped by her husband, she has no recourse if the government does not infiltrate this private realm. The Indian Constitution's Article 14 is violated whenever marital rape is not criminalized. "The state shall not refuse to any people equality before the law & equal protection of the law," says Article 14. The Indian penal code treats women who have experienced sexual assault by their own spouses differently, in violation of the Constitution's clause guaranteeing everyone the right to legal protection.⁵

Because she was viewed as the property of her husband rather than as an independent person, an engaged woman wasn't taken into account. She consequently had few legal rights. The assumption of the wife's identity merging with her husband's is the fundamental idea behind exception 2 of Section 375. In recent years, courts have recognized that the right of life includes the freedom against unwanted spouse approaches and forced sexual participation. In *Surjit Singh Thind vs. Kanwaljit Kaur*⁶, the Punjab and Haryana High Court decided that a woman's right to privacy and personal liberty, guaranteed by Article 21, would be violated if she were permitted to undergo a medical examination to ascertain her virginity. The seminal report that recently rekindled the discussion over marital rape is the J.S. Verma Report. The committee made four recommendations to effectively make marital rape a crime. It demanded that the exemption clause be eliminated, that it be made clear that it's not a defense, that there be no presumption of consent, and that the sentence be the same. On the other hand, the 42nd Legal Commission Report

⁵ Chandra Aditya Hari, Marital Rape and the Aspect of Consent in a Marital Relationship (November 15, 2023)

⁶ MANU/PH/0848/2003

recommended the marital rape be classified under a new heading, not "marital rape," and be subject to a different penalty.

In addition to suggesting that the exception for marital rape be eliminated, the Justice Verma Committee Report⁷ suggested that legal changes clarify that the complainant's relationship with the accused is unimportant when determining whether or not the complainant gave their consent to the sexual activity. The Committee observed that judges may consider marital rape to be more minor than other types of rape, which could result in more lenient punishments even in cases when it is recognized as a crime. It suggested that the legislation should clearly state that a marital relationship cannot be taken into account as a mitigating element that justifies a lighter sentence for rape, much like the amendments that were put into place in South Africa.

IMPACT OF MARITAL RAPE

The experience of marital rape is extremely painful and leaves survivors with long-lasting physical and unseen scars. The loss of a woman's sense of safety, trust, and authority over her personal body is a violation. Forced intimacy in marriage transforms what ought to be an act of bonding into one of dominance and violence, in contrast to a loving, consensual partnership.

There may be serious physical repercussions. Many survivors are forced to cope with unintended pregnancies on their own, and survivors may sustain internal injuries, infections, and bruising. However, the emotional scars were equally severe. Debilitating anxiety, depression, as well as PTSD can result from being betrayed by a spouse who is meant to love and protect them. While some women remain silent out of dread fear of shame, fear of reprisals, and concern that no one would believe them many women completely avoid relationships out of fear of being harmed again.

Survivors frequently have limited legal options in nations where marital rape is not considered a crime. They are informed that it is their responsibility to comply and that if their husband is the one committing the crime, it isn't "real" rape. This normalizing of coercion only serves to strengthen gender inequality and perpetuate abusive patterns. Women may get even more ensnared in these circumstances due to economic reliance, which makes exit appear unattainable.

However, quiet does not imply agreement. Real assistance for survivors, societal change, and legal recognition are all necessary to address marital rape. It entails hearing their words, acknowledging their suffering, and making sure they are not abandoned to endure it alone. Fundamentally, this is a human rights issue that requires immediate attention rather than only being a legal one.

CASE LAWS

Analyzing the court's hesitancy to address fundamental rights within the private domain requires following the development of rulings pertaining to "restitution of conjugal rights." This is due to the fact that the discussion over marital rape is comparable to the constitutional law concerns surrounding the restoration of conjugal rights. Despite not being used today; this remedy has its roots in English law. Through this process, a court can compel married couples to live together and restore one spouse's marital rights against the other. Section 9 of the Hindu Marriage Act of 1956 contains this information in India. The main idea of the section is that the court may issue a decision of restitution of marriage rights if one spouse does not live among the other "without reasonable excuse." It has been observed that women suffer when their

⁷ Justice J.S. Verma Committee, Report of Committee on Amendments to Criminal Law (January 23, 2013)

conjugal rights are restored. Resuming conjugal intercourse with their husbands is frequently a requirement for women. The main issue here is whether the government can force a woman to engage in sexual contact with her husband, much like in the discussion of marital rape.

In *T. Sareetha v. T. Venkata Subbaiah*⁸, the Andhra Pradesh High Court was the first to rule that the Hindu Marriage Act's provision for the restoration of conjugal rights was unconstitutional. The Court was presented with the contention that Articles 14, 19, and 21 of the Constitution were breached by Section 9 of the Hindu Marriage Act. This argument was accepted by the Court. The Court ruled that the system of restitution remedy is unconstitutional since it gave the State the woman's decision to engage in sexual activity. Since it infringes on an individual's personal autonomy, this would be against Article 21 of the Constitution.⁹ Furthermore, the Court acknowledged that this clause would harm women and acknowledged the significance of sexual autonomy for women. "No positive act of sex may be forced upon the unwilling people, because nothing can conceivably have been more degrading to human dignity or monstrous to human spirit than to subject an individual by the long arm of the law to a positive sex Act," the Court agrees here as well.

The Delhi High Court was presented with a petition contesting the legitimacy of the restoration of conjugal rights in the case of *Harvender Kaur v. Harmander Singh Choudhry*¹⁰. The Court maintained that Section 9 of the Hindu Marriage Act was valid. In this instance, the Court declared that the goal of restoring conjugal rights was to "protect the institution of marriage," not to force someone to remain with their spouse. It also rejects the idea that women would be compelled to get back into marriage with their husbands as a result of a restitution order. In one section of the ruling, the Court adopts a progressive position by noting that marriage comprises more than just sexual connections. But once more, the Court ignores the reality that there is a very high likelihood that women who are forced to live with their husbands will also be coerced into sexual relationships by using this "progressive" interpretation of marriage. By adhering to the "marital privacy" premise, the Court ignored this type of abuse that women would experience.

When a husband "rapes" his wife, he cannot claim the protection of an exception listed under Section 375 of the Indian Penal Code (IPC) because the exemption is not "absolute," according to *Justice M Nagaprasanna's ruling in Hrishikesh Sahoo v. State of Karnataka*¹¹. "No legal exemption can be so complete that it become a license for the commission of crimes against society," the court declared. "A man is a man; an act is an act; rape is a rape, whether it is committed by a man the "husband" on the woman the "wife," the court stated.¹²

The husband was first found guilty of rape, unnatural sex, and culpable homicide in the most recent instance of *Gorakhnath Sharma vs. State of Chattisgarh*¹³ after his wife passed away from wounds sustained during a violent sexual act. Citing exception 2 of Section 375 IPC, the Chattisgarh High Court cleared the husband, highlighting the ongoing legal protections for marital rape. It is obvious that any sexual contact or conduct between a husband and wife cannot be considered rape if the lady is not younger than 15 years old. Therefore, the wife's lack of agreement for an unnatural act becomes less significant," Justice

⁸ 1983 SCC OnLine AP 90 : AIR 1983 AP 356.

⁹ Justice J.S. Verma Committee, Report of Committee on Amendments to Criminal Law (January 23, 2013).

¹⁰ 1983 SCC OnLine Del 322 : AIR 1984 Del 66.

¹¹ MANU/SCOR/99604/2024

¹² The New Indian Express, Why Karnataka marital rape verdict is problematic (April 15, 2022)

¹³ MANU/CG/0320/2025, CRA No. 891 of 2019

Narendra Kumar Vyas ruled.¹⁴ The ruling has brought attention to the gap in cases pertaining to marriages. An executive magistrate recorded the victim's final declaration, which claimed that her husband's violent sexual relations were the reason behind her illness. The appellant was sentenced to ten years of harsh jail in May 2019 after the trial court found him guilty of rape, unnatural offenses, and culpable homicide that did not amount to murder.

Justice Vyas decided to reverse the ruling in spite of the prosecution's argument about the seriousness of the offense. The high court judge wrote in the ruling that "parts of the body used for carnal intercourse also have in common, and the appellant is a 'husband' and the victim is a 'woman,' here she is a 'wife.' Therefore, the offence between a married couple cannot be created out under Section 375 of IPC."

CURRENT STATUS

In the Supreme Court, the Union government has defended the laws against marital rape, claiming that doing away with the exception would ruin marriage as an institution. The government has urged the court to uphold the legislature's wisdom in keeping the law in place. A comparable immunity clause for husbands can be found in the BNS. There is no provision in the BNS that would make non-consensual unnatural sex an offense, similar to Section 377 of the IPC. Although the government acknowledges that a husband does not have the fundamental right to violate his wife's consent, it has maintained that applying the severe penalties for rape in married relationships would be unduly harsh and might have significant socio-legal ramifications. The contentious document from October 2024 also cautioned against the "potential misuse" of the statute in the event that the exception is eliminated.

The Indian government maintains that married women are already adequately protected from domestic and sexual abuse by the law. According to the the federal government's affidavit this week, a 2005 statute that protected women from domestic violence included provisions for marital rape. Although it does not specifically specify sanctions, the law acknowledges sexual abuse as a type of domestic violence. Men found guilty of acts generally construed as "cruelty" against their spouse face a maximum sentence of three years in jail under another part of the penal code.¹⁵

CONCLUSION

An essential component of any sexual connection, including marriage, is consent. But does a lifetime, unrestricted right to sex come with marriage? Every woman should be recognized as a person with control over her own body, regardless of whether or not she is married. In order to safeguard women from violence and provide true gender equality, marital rape must be recognized as a criminal offense.

Women are deprived of their most fundamental rights and find it more difficult to pursue justice when the law does not recognize marital rape. Marriage shouldn't ever be a cover for abuse or a way to deprive a woman from her independence. In today's legal and cultural environment, the antiquated notion that consent is automatically implied by marriage is no longer relevant. Laws must change to meet society's evolving requirements. The current system is nonetheless ineffectual and does not give women the protection they are entitled to in the absence of substantial legal reform.

A woman's right to autonomy & bodily integrity is denigrated by the government's position, which places a higher priority on "preserving the institution of marriage." Therefore, the government sees marriage as eradicating a woman's control over her own body and treating her like property that the husband has

¹⁴ Hindustan Times, Woman dies of husband's sexual act, HC cites marital rape ground to acquit him (February 12, 2025)

¹⁵ Arshad R. Zargar, CBS News, India's government formally opposes bid to criminalize marital rape (October 4, 2025)

complete authority over. In order to protect the institution of marriage, it considers the loss of a woman's right to physical integrity to be collateral damage. A definition of equality would have to recognize that any "institution" founded on sexual violence against another individual must and should not be preserved but rather reexamined in a way that promotes greater equality. However, the government's position merely serves to reinforce its rejection of the concept of equality.¹⁶

¹⁶ Maitreyi Krishnan, The Union Government's Stance on Marital Rape: Defending Violence in Marriage (October 30, 2024)