



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

MARITAL RAPE IN INDIA: EXCEPTION 2 OF SECTION 375 OF IPC – A LEGAL SHIELD

B Bhavya Sai

I. ABSTRACT

Marriage is divine bond between two individuals and but in present its essence has turned into a contract. From antiquity, woman as a child is considered a property of a father and after marriage of her husband but with time the scenario has major legal development by recognising rights of woman under the laws and also recognising her as an individual. In India rape is a heinous offence and with time-to-time amendments are made for its strict enforcement. But when it comes to marital rape it's still a question whether to criminalize it or not. Marital rape means a forced non-consensual sex with one's own wife; it is believed that marriage gives man full rights on woman's body and can demand sexual relations at any time. In past two to three decades cases relating to marital rape have received public attention only after women raised their voice against the mishappening happening at their own home and the demand for equal rights towards married women's right on their bodies. The concept of implied consent in matrimonial relation has become its identity which needs to be changed. Under Indian Penal Code, 1860 major married woman have no protection against marital rape, after enacting Bharatiya Nyaya Sanhita, 2023 the issue is still unaddressed. Here, it can be seen that law distinguished between unmarried and married women and impacting the physical and emotional well-being violative Article 14 and 21 of the Constitution of India. Here, marital rape is examined in Indian context. The research paper would be addressing the historical background to present legal scenario. The exception provided under the penal laws creating distinction between married and unmarried woman and its adverse effects on her anatomy. There are concerns relating to criminalising marital rape would impact the institution of marriage the same would be addressed under this paper stating arguments in favour as well as

the arguments against it. Also addressing the remedies available to the victims of the marital rape.

II. INTRODUCTION

Historically patriarchy is rooted in India and women are passively involved in her own marriage. There were few instances where women were asked about her choices she was meant to live her life on the terms of her husband. With progressing society women have achieved massive success in every field which is evident that today no field is untouched by a woman. But still the rooted problem relating to the atrocities against women have never ended but comes up with new names like 'marital rape'.

Marriage in India is considered a sacramental union and considered as an eternal union of two individuals. While the concept of marital rape in India is new for a common man for addressing a marital relation with his own wife would amount to rape because marriage and rape are antonyms to each other. While the marital relation never stood on the base of 'consent' and it is an integral part of marriage. And it will not be surprising to call forced marital relation as 'legal rape.'

Even today marital rape is not criminalised in India except for the 2nd exception under section 375 of the Code which states married women being minor (under 18 years of age) is subjected to forced sexual relations will amount to rape. Even today woman's right to her own body and her choice to say 'no' is debatable.

III. HISTORY OF MARITAL RAPE

Men have always considered women in every form such as property, object, maid and what not except for considering her as his better half or a human. Sir Mathew Hale, who articulated the English common law principle in 1736, stated that a husband cannot be guilty of a rape that is committed upon his lawful wife since, through their mutual, matrimonial consent and contract, she has already given herself to him and cannot retract that.¹ In other words, it can be stated that husband cannot rape his own wife as marriage gives them the indefinite right to have sexual

¹ Brisa Victorio, The Effects of Marital Rape on a Woman's Mental health, 11 Themis: Research Journal of Justice Studies and Forensic Science 4 (2023) <https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1117&context=themis>

relations with her. It's not an issue that is being limited to India but most developed countries have also the same mindset when seeing a woman, it's an age-old concept. Patriarchy exists in our country the way air exists in the atmosphere, just as air affects breathing patriarchy impacts the daily life choices of the woman unconsciously.

The exception relating to marital rape find its origin in English Common Law. It can be understood in the light of "Doctrine of Coverture" which is a principal of English Common Law. According to the doctrine "woman are placed under the cover of man and treating them as single entity." Due to which woman loses her right as to ownership of property (owning and disposing it), right to enter into contract and other rights which she was entitled to before marriage. Which shows that woman had lost her independent legal existence to her husband at the time of marriage. Marriage established sexual rights for the husband while the wife lost her power to grant consent which continued throughout their marriage.² {Sneha Gaur}

In India, classical Hindu law unlike Islamic laws reflects the earlier mindset. The law of marriage in India unlike Islamic countries is a rule where married women tend to believe that the life after marriage is their fate and their husbands becomes their '*bhagyavidhata*.' Similar is the case in Islamic law, even in Islamic law one of the major reasons of divorce is disobedience on the part of wife. The concept must have evolved from the theory of "Might is always right" where the superior males always have considered females feeble and hopeless creature in a society the legal subordination of wives is always considered to be a misbalance. The origin of the concept of a marital exemption from rape laws could be a rule that a husband cannot be accused and charged for rape of his wife.³ It is also perceived that woman has to yes whenever man wants her. And such an attitude has been propagated by various ancient texts and traditions like Manusmriti. In these texts the concept of 'good woman' is defined as the one who never does an act which may angered the husband. Woman has to live in closed definition of 'good woman.' For a woman, there is no independent sacrifice, vow or fast; a woman will be exalted in heaven by the mere fact that she has obediently served her husband. A good woman, desiring to go to the same world as her husband, should never do anything displeasing to the man who took her hand, whether he is alive or dead.⁴

² Sneha Gaur, Criminalization of Marital Rape: A Constitutional Debate, 8 Indian Journal of Law and Legal Research 495 (2026)

³ Mamta Thapa, Marital Rape: A Crime Undefined » Indian Institute of Legal Studies Blog, Indian Institute of Legal Studies (22nd July 2026, 11:30 p.m.) <https://www.iilsindia.com/blogs/marital-rape-crime-undefined/>

⁴ Sreyashi Ghosh, Manusmriti: The Ultimate Guide to Becoming a 'good woman,' Feminism in India (22nd July 2026) <https://feminisminindia.com/2018/01/11/manusmriti-ultimate-guide-good-woman/>

From 17th to 21st century woman has come a long way and now they are recognised as an independent person. They have given equal status as a man, offences against woman were recognised under the laws. Many countries felt the need to criminalise marital rape but in India it is not recognised as an offence.

IV. MARITAL RAPE

A. MEANING OF MARITAL RAPE

Before understanding the concept of Marital Rape let's understand what does the word 'Rape.' The offence of rape is criminalised under Indian Penal Code, 1860 where Section 375⁵ defines the offence while Section 376⁶ provides punishment for the offence. The offence is defined under the Code as

“375. Rape.

A man is said to commit "rape" if he-

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:
 - (i) against her will;
 - (ii) without her consent;
 - (iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

⁵ Corresponding Section 63 of Bharatiya Nyaya Sanhita, 2023

⁶ Corresponding Section 64 of Bharatiya Nyaya Sanhita, 2023

- (iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
- (v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent;
- (vi) with or without her consent, when she is under eighteen years of age;
- (vii) when she is unable to communicate consent.

Explanation 1. —For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. —Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. —A medical procedure or intervention shall not constitute rape.

Exception 2. —Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”.⁷

Black Law Dictionary 8th edition has defined marital rape as “a husband’s sexual intercourse with his wife by force or without consent.” While Marital Rape also referred to as ‘spousal rape’ means performing sexual relations with his one’s spouse without their consent to engage in the act. Whether a spouse has agreed or not was never asked because of the concept of existence of implied consent. There is no straight jacket formula to say that this constitutes marital rape because it may vary from case to case.

In India Marital Rape is not recognised as an offence under the Law. So, it exists in India as de facto (in fact) and not de jure (by law) which means its existence is seen on ground level even though it is not recognised by Law.

The question arises that if man and woman are married why can’t it be called as rape? Just because they are married why can’t it be seen in the purview of the definition of rape. Marriage

⁷ Indian Penal Code, 1860

in earlier times to the modern times has evolved in significant way, from divine bond (sacred) to partnership of equals and consent remains unaddressed, still it has not been understood by the society that a 'no' simply means 'no.'

B. TYPES OF MARITAL RAPE

There certain types of marital rape as prevalent in the society depending upon the how the husband acts during the consummation. The same were discussed in the case of **Nimeshbhai Bharatbhai Desai v. State of Gujarat**,⁸ they are as follows:

- (a) Battering rape - In this type of rape physical and sexual violence is seen. Some are battered during the sexual violence, or the rape may follow a physically violent episode where the husband wants to make up and coerces his wife to have sex against her will. The majority of marital rape victims fall under this category.⁹
- (b) Force only rape - Once a wife has refused to engage sexual act the husband may apply only that much force on the wife to have sexual relations with him and physical abuse is not always visible in this type of marital rape.
- (c) Obsessive rape - It is also referred as 'sadistic rape' where the wife is tortured during sexual act. It may also include painful, unwanted sexual act.

C. EFFECTS OF MARITAL RAPE ON WOMAN

The effect of rape where the accused is unknown in cases have a significant long-lasting effect. Then the effect of marital rape where the accused is her own husband on whom the wife has full faith and trust on him, because for woman in India it is believed that husband is her 'God' can cause severe effect on her psychological and physical effect.

The psychological effects can be unimaginable on woman; a woman is nurtured in nature that she is soft hearted person and events like these can have drastic impact on her daily life. The effects can be seen on short term and long-term basis. Some of the short-term effects of marital rape include anxiety, shock, intense fear, depression, suicidal ideation and post traumatic stress. Long term effects often include disordered eating, sleep problems, depression, problems

⁸ 2018 SCC Online Gujarat 732

⁹ Eastern Book Company – Practical Lawyer, <https://www.ebc-india.com/lawyer/articles/645.htm> (last visited on 21st July 2026)

in establishing trusting relationships and increased negative feelings about themselves.¹⁰ In many cases woman may develop suicidal tendencies for unable to cope with that pain. These may stay with the victim for life because physical wounds may heal with time. But psychological effects are borne by mind and heart which requires a lot time to heal and move forward in life, they are never visible to human eyes.

While the physical effects are openly visible to human eyes, the injuries may be healed by medications. These may cause severe injuries like fractures, injury to private organs, bruises which may be seen in battered or sadistic form of rape. Bladder infections, muscle tears, soreness are other effects of this rape. There may also have gynaecological effects which may impact her reproductive health like miscarriage, stillbirths due to trauma, unwanted pregnancies, HIV/ Sexually Transmitted Diseases, and may result in infertility.

Woman have been separated from their partners report the cases relating to domestic violence. They later ask for forgiveness and want to meet children. After that they rape them assault them, in one such case, “a survivor who divorced her husband because of domestic violence said that he came to her house, asked forgiveness, and had forced sex with her.” (from service record of 32-year-old survivor)¹¹

D. EXCEPTION TO MARITAL RAPE

The exception relating to marital rape has received a wide spread criticism for immunizing husbands who perform non-consensual sexual act with their own wife. The Exception 2 to Section 375 which reads as –

Exception 2. —Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”.¹²

Which means a woman who is above the age of 15 years her husband performs any non-consensual sexual act does not amount to rape. In the landmark judgement of **Independent Thought v Union of India**,¹³ where it was held by the Supreme court that any sexual act by

¹⁰ Eastern Book Company – Practical Lawyer, <https://www.ebc-india.com/lawyer/articles/645.htm> (last visited on 21st July 2026)

¹¹ National Library of Medicine, <https://pmc.ncbi.nlm.nih.gov/articles/PMC8967187/#FN0003> (last visited on 22nd July 2026)

¹² Indian Penal Code, 1860

¹³ AIR 2017 Sc 4904

the husband of the woman aged between 15 – 18 years would amount to rape. Here the age was increased from 15 years to 18 years.

But there exists another scenario which states that if a man has sexual with his own wife without her consent can be punished only when they were living separately under a decree of Judicial separation. It is a punishable offence recognised under Section 376B of Indian Penal Code, 1860.¹⁴

E. LEGAL DEVELOPMENTS

1. The 42nd Law Commission Report, 1971

It was the 1st report where the exception relating to marital rape was discussed. It was suggested that the marital rape exception should not apply in the cases where husband and wife are living separately due to judicial separation. And the same was later added under the Indian Penal Code, 1860 under Section 376B by Criminal Law Amendment Act of 2012¹⁵ which read as:

“Section 376B. Intercourse by a man with his wife during separation

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.”¹⁶

It was stated that the exception failed to take note of one special situation where husband and wife are living apart under the decree of judicial separation or by mutual agreement, even though the marriage subsists and forcing himself on wife during that period does not seem right.

¹⁴ Corresponding to Section 67 of Bharatiya Nyaya Sanhita, 2023

¹⁵ Law Commission of India, 42nd Report on Indian Penal Code. 1860, 277 (23rd July 2026) https://lawcommissionofindia.nic.in/cat_Indian_Penal_Code/

¹⁶ Corresponding to Section 67 of Bharatiya Nyaya Sanhita, 2023

2. The 172nd Law Commission Report, 2000 (Review of Rape Laws)

It was under this report that for the first time the question of marital rape was directly put to the Law Commission.¹⁷ It was argued by the opponents that other facets of marital relationship have been dealt under the Criminal Law, then why non-consensual sexual intercourse forced by a husband upon his wife can't be dealt under it.¹⁸

3. Justice J.S. Verma Committee Report, 2013 (Amendments to Criminal Law)

This report brought drastic changes into the law relating to rape. Recommended to criminalize marital rape after Nirbhaya rape case. But Standing Committee of the Parliament quoted that criminalizing marital rape will stress the family system in India. After Nirbhaya rape case a provision was added which states that insertion of an object or any other body part into a woman's vaginal, urethra, or anus will amount to rape. It expanded the definition to include oral sexual act. The committee recommended amendments to the Criminal Law so that quicker trials and enhanced punishments to the accused person committing sexual assault.

In 2016, then Woman and Child Development Minister Maneka Gandhi stated in the Rajya Sabha that the concept of marital rape could not be applied to India because marriage is a 'sacrament.'¹⁹

4. The 167th Parliamentary Standing Committee Report

The Standing Committee report also witnessed difference of opinion on marital rape. Some members also suggested that somewhere there should be some room for the wife to take up the issue of marital rape. It was also felt that no woman takes marriage so simple that she will just go and complain blindly. Consent in marriage cannot be consent forever. However, several members pointed that criminalising it has the potential to destroy the institution of marriage.²⁰ The committee emphasised that aggrieved woman may seek other remedies available under law.

¹⁷ Law Commission of India, 42nd Report on Indian Penal Code. 1860, 23 (23rd July 2026) https://lawcommissionofindia.nic.in/cat_Indian_Penal_Code/

¹⁸ Harleen Kaur and Aayush Tripathi, Exception to Marital Rape in India: An Unconstitutional Intrusion into the Victim's Right to equality and privacy, Winter Issue III Law Review 304, 2022

¹⁹ Firstpost, <https://www.firstpost.com/india/india-does-not-criminalise-marital-rape-which-are-the-countries-where-spousal-rape-is-a-crime-10485411.html> (last visited on 22nd July 2026)

²⁰ Department-Related Parliamentary Standing Committee on Home Affairs, 167th Report on The Criminal Law (Amendment) Bill, 2012 pg no. 26-27

These reports address the issue of marital rape as prevalent in society but much stress is given on the institution of marriage because the reason is simple if it is criminalised the family system will all at once may be shattered. It is necessary that for society to family system must exist in peaceful manner. There may occur a lot of challenges while addressing this issue.

F. NEED FOR CRIMINALISATION OF MARITAL RAPE

(i) Violation of Article 14 of the Constitution of India

Article 14 of the Constitution of India reads as:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Earlier woman's identity was merged with that of her husband due to which she was not recognised as a separate individual and can't file a case against her husband in her own identity. The exception 2 of Section 375 on Indian Penal Code, 1860 ultra vires the right to equality incorporated under Article 14 of the Constitution of India as it discriminates against those women who are married by disconfirming them tantamount security from rape and sexual abuses.²¹

Which is clearly visible that woman who are married or unmarried are not protected equally. The offences committed against unmarried woman are punishable but if woman is married and exploited by her own husband, she cannot seek legal help due exception 2 of Section 375. This distinction violates the fundamental right to equality to be treated equally.

The Supreme Court in the case of **Budhan Choudhary v. State of Bihar**,²² it was ruled that legal classification must have reasonable nexus to the statute's objectives. Exception 2 fails this test by arbitrarily excluding married women from protection against rape.

(ii) Violation of Article 21 of the Constitution of India

Article 21 of the Constitution of India reads as:

“No person shall be denied of his right to life and personal liberty except with the procedure established by law.” The Supreme Court has consistently expanded the scope

²¹ Bhagyashikha Saptarshi, Marital Rape and Law, Manupatra Articles (22nd July 2026, 12:30 p.m.) <https://articles.manupatra.com/article-details/Marital-Rape-and-Law>

²² AIR 1955 SC 191

of Article 21 to protect individual dignity. The marital rape exception, however undermines this constitutional mandate, leaving married women vulnerable to abuse.²³

In **State of Karnataka v. Krishnappa**,²⁴ the Supreme Court held that “sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of woman.”

In **C.E.S.C. Ltd. v. Subhash Chandra**,²⁵ it was held by the Supreme Court that one of the most crucial things to preserve a citizen’s uniqueness in the nation is their right to healthy and dignified existence, which is included in right to life. While the exemption to Section 375 violates married woman’s right to her own health since marital rape causes emotional, psychological and physical issues for her. Sexual activity without her consent undermines her health and dignity.²⁶

In **Justice K.S. Puttaswamy v Union of India**,²⁷ the Supreme Court established right to privacy as an inherent right which is available to the people safeguarding their freedom.

Which means a woman has the right to sexual privacy and without her consent no one should force her. Recognising right to privacy as a fundamental right but still married woman is not free to exercise the same.

V. JUDICIAL PERSPECTIVE

In this case of **Sakshi v. UOI**,²⁸ it was quoted by the NGO that any physical violence by husband is considered as an offence then why sexual intercourse without the consent of the wife is not considered to be a punishable offence but the Supreme Court upheld the definition of rape and no alteration is required to be made.

In **Harminder Kaur v. Harmander Singh**,²⁹ it was held by the Delhi High Court that Judicial intervention in domestic matters could disrupt the sanctity of marriage.

²³ Bikram Kumar, Marital Rape: Legal Lacunae and Need for Reform, The Legal Quorum, (22nd July 2026, 01:30 p.m.) <https://thelegalquorum.com/marital-rape-legal-lacunae-and-need-for-reform-3/>

²⁴ ILR 1994 KAR 89

²⁵ 1992 AIR 573

²⁶ G R Arun Prakash, Peketi Kasi Visweswara Sita Rama Rao, Marital rape in India: A New Perspective 10 International Journal for Research Trends and Innovation a613 (2025)

²⁷ (2017) 10 SCC 1

²⁸ AIR 2004 SC 3566

²⁹ AIR 1984 Delhi 66

In **Independent Thought v. UOI and Anr.**,³⁰ writ petition was filed to challenge the exception 2 of Section 375. In this case Supreme Court held that sexual intercourse by husband with his wife whose age falls between 15 to 18 years will be considered rape, it's limited to particular age criteria and does not protect married woman of any age who are victim of marital rape. It was ruled that the exception is arbitrary and unconstitutional, violating Article 14 and 21.

And the Bharatiya Nyaya Sanhita, 2023 amended the Law and incorporated the Supreme Court's judgement "sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape"³¹ now, the law declared by the Supreme Court and the law enacted by Parliament are consistent – unlike the period between 2017 and 2023.³²

In **Nimeshbhai Bharatbhai Desai v. State of Gujarat**,³³ the progressive observations underscore the need for abolishing the notion of implied consent in marriage. Comprehensive legal reforms and societal change are imperative to uphold women's rights and eliminate this deeply entrenched injustice. Justice J B Pardiwala held that exception is unconstitutional and in violation of Article 14 and 21 of the Constitution of India.

In **RIT Foundation v. Union of India**,³⁴ there was split verdict wherein, Justice Rajiv Shakti held Exception 2 is unconstitutional stating: 'a woman's right to say 'no' exists regardless of her marital status.' And he made a remark that ignoring this call for justice after 162 years of the Indian Penal Code, 1860 enactment would be tragic. While Justices C. Hari Shankar upheld the exception stating it would judicially overreach.

In **X v. The Principal Secretary of the Health and Family Welfare Department, Delhi NCT Government and Anr.**,³⁵ in this landmark judgement ensures that woman who are subjected to forced pregnancies due to marital rape., can seek legal redress for abortion under MTP Act, it is a major step in protecting women's reproductive choices and fighting the social perception that reduces marital abuse to disrespect for wife's choices. The Court stressed that consent and bodily integrity are important by placing marital rape under the definition of 'rape' under the MTP Act.³⁶

³⁰ AIR 2017 SC 4904

³¹ Section 63 of Bharatiya Nyaya Sanita, 2023

³² Delhi Law Academy, <https://www.delhilawacademy.com/sc-marital-rape/> (last visited on 25th July 2026)

³³ 2018 SCC Online Gujarat 732

³⁴ 2022 SCC OnLine Del 1404

³⁵ 2022 SCC OnLine 1321

³⁶ Harshita Bindaiya, Arushi Sharma and Shivanshu Gupta, Marital Rape in India: Constitutional and Gender Challenges 8 International Journal of Law Management and Humanities 509 (2025)

In the case of **Hrishikesh Sahoo v. State of Karnataka**,³⁷ constitutionality of the exception 2 of Section 375 is challenged. The case is pending in the Supreme Court it is yet to be decided if the marital rape exception to Section 375 of the IPC violates the fundamental rights of the married woman.³⁸

VI. CRIMINALISATION OF MARITAL RAPE

More than 150 countries have recognised marital rape as an offence but still India does not recognise marital rape as an offence. India lists in the 36 countries where marital rape is not crime.³⁹ While the Centre on Thursday (October 3, 2024) told the Supreme Court that punishing non-consensual sexual acts by a man with his own wife as ‘rape’ will impact conjugal relationship and lead to “serious disturbances” in the institution of marriage.⁴⁰ It opposed the criminalisation of marital rape stating matter relating to marital rape needs ‘a comprehensive approach’ rather than ‘a strict legal approach’ as it is very far reaching socio legal implications in the country.⁴¹

The National Family Health Survey (NFHS-5), 2019-21, India’s largest health survey that saw participation from over six lakh sample households, found that among ever-married women who reported facing sexual violence, 95.7% identified their husbands or former husbands as the perpetrators 6.2% of currently married women between the ages of 18 and 49 reported experiencing sexual violence at least once in their lifetime, and of them, 82 % identified their current husband as the perpetrator.⁴²

While according to World Health Organisation in 2023 violence against women on behalf of UN Integratory Working group on Violence against Women Estimation and Data found that

³⁷ MANU/KA/1175/2022

³⁸ Challenge to the Marital Rape Exception - Supreme Court Observer, <https://www.scobserver.in/cases/challenge-to-the-marital-rape-exception-hrishikesh-sahoo-v-state-of-karnataka/> (last visited at 24th July 2026)

³⁹ India Today, <https://www.indiatoday.in/education-today/gk-current-affairs/story/marital-rape-312955-2016-03-12> (last visited on 22nd July 2026)

⁴⁰ The Hindu, <https://www.thehindu.com/news/national/treating-non-consensual-sexual-acts-within-wedlock-as-rape-will-seriously-impact-institution-of-marriage-centre-tells-supreme-court/article68714928.ece> (last visited on 22nd July 2026)

⁴¹ Times of India, <https://timesofindia.indiatimes.com/india/excessively-harsh-centre-opposes-marital-rape-criminalisation-in-supreme-court/articleshow/113911358.cms> (last visited on 22nd July 2026)

⁴² Feminism in India, <https://feminisminindia.com/2026/04/14/the-marital-rape-exception-what-the-law-says-and-what-it-refuses-to-see/> (last visited on 24th July 2026)

worldwide, nearly 1 in 3 (32%) women have been subjected to physical and/or sexual violence by an intimate partner or non-partner sexual violence or both.⁴³

The data available above is the data where women came forward and cited the issues and the places where survey has reached even today many women doesn't dare to speak up due to fear, social stigma and maybe they don't even know that the acts they are facing is wrong.

Even as India does not recognise Marital rape as a punishable offence, Karnataka High Court delivered a pivotal judgement that can be called groundbreaking as it said, 'rape is a rape, be it by the husband.'⁴⁴ While Gujarat High Court has said that rape remains a grave offence, even if it is committed by the victim's husband and pointed to marital rape being illegal in several many countries across the world.⁴⁵

(A) Arguments in favour for criminalising

- (a) Exception 2 violates Article 14 because it clearly distinguishes between married and unmarried woman. And it also violates Article 21 which deals with right to life under its ambit right to autonomy is also recognised and right to privacy.
- (b) Sexual intercourse committed against unmarried woman is rape while for a married woman its implied consent to indulge in sexual relations, which immunizes husband. The concept 'implied concept' is of no relevance.
- (c) According to Protection of Children from Sexual Offences Act, 2012 and Juvenile Justice Act, 2015 person below the age of 18 years is considered child, while the exception under IPC considers offence of marital rape against woman under 15 years of age. After 2013 Criminal Law Amendment the definition in Section 375, the age is increased from 15 years to 18 years for giving consent in sexual intercourse. What about the woman not falling under this category?
- (d) Section 498a does not specifically recognizes Marital Rape and understanding marital rape as a form of cruelty will not justify the act.

⁴³ World Health Organization, <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (last visited on 18th July 2026)

⁴⁴ Firstpost, <https://www.firstpost.com/india/india-does-not-criminalise-marital-rape-which-are-the-countries-where-spousal-rape-is-a-crime-10485411.html> (last visited on 22nd July 2026)

⁴⁵ Hindustan Times, <https://www.hindustantimes.com/india-news/marital-rape-grave-offence-illegal-in-many-countries-gujarat-high-court-101702912826753.html> (last visited on 22nd July 2026)

(B) Arguments against criminalising

- (a) The first and foremost reason for not criminalising it and even Central Government also submitted affidavit to Supreme Court stating it will disturb the institution of marriage.
- (b) Law has provided other remedies such as Section 498A of Indian Penal Code, 1860 and Protection of Woman from Domestic Violence Act, 2005 in criminal law and it is a ground for seeking divorce under civil laws.
- (c) It is always seen that whenever the Law has been enacted considering welfare of women such as Dowry death, Cruelty and today many fake cases are ongoing against the husband. And there is a lot of possibility that recognising it as an offence will definitely be misused by women and harassing their husband for fulfilling unlawful demands.
- (d) Another reason which is seen that it will be difficult to show the consent was free or not whether there is coercion made by him and she has given consent in fear, it will be difficult to adduce evidences.

It is true that this term is oxymoron when adjudged in light of the social background. However, this does not undermine the unconstitutionality of the marital rape exception. Historically sati practice was an accepted cultural practice and even that was criminalised. So 'culture might not permit rape,' does not undermine the unconstitutionality of not doing so. If anything, this should only motivate both judiciary and legislature to take prompt action.⁴⁶

VII. REMEDIES AVAILABLE TO THE VICTIMS OF MARITAL RAPE

Even though Marital Rape is not recognised as an offence but still the victim may seek alternative remedies available under the Law. There exist remedies under Civil Law as well as Criminal Law.

A. Civil Laws

There are certain remedies available to the victims of marital rape, the remedies which are available in civil laws are

⁴⁶ Raveena Rao Kallakuru and Pradyumna Soni, Criminalisation of Marital Rape in India: Understanding its Constitutional, Cultural and Legal Impact 11 NUJS Law Review (2018) <https://docs.manupatra.in/newslines/articles/Upload/8787A55C-D93F-4589-8A68-A9A032AFAF0E.pdf>.

(i) Protection of Women from Domestic Violence Act, 2005

The woman may file complaint under this Act, which protects woman from all kind of domestic abuse which include sexual abuse. Woman may seek Protection Order under Section 18 of the Act which will stop the husband from approaching her in any manner. While under Section 19 of the Act she may file for asking residence order so that she cannot be dispossessed from the shared household or the respondent may be ordered to secure same level of alternate accommodation for her and it is right to reside in shared household under section 17 of the Act. She can claim monetary relief under section 20 where the relief may include loss earning, medical expenses, the loss caused to her property and maintenance but this is not exhaustive in nature. Besides all these she may file for compensation under Section 22 of the Act which will be in addition to other reliefs.

The Act recognises sexual abuse under Section 3 of the Act as “any conduct of sexual nature that abuses, humiliates degrades or otherwise violates the dignity of a woman.” But the exception 2 of Section 375 contradicts with the Constitution of India and Protection of Women from Domestic Violence Act, 2005. But still the rape occurring within the marriage is not recognised as offence only civil remedy can be claimed under the Act.

(ii) Marital rape as a ground for Divorce/Judicial Separation

If any woman is victim for Marital rape may seek divorce/judicial separation on the ground of cruelty. Under family law, cruelty is a valid ground for seeking divorce and marital rape is a form of cruelty inflicted by husband.

B. Criminal Laws

When seeking remedies under Penal Laws the relevant provision is Section 498A of Indian Penal Code, 1860⁴⁷ which criminalises cruelty by husband with punishment which may extend to three and fine. The term cruelty is explained in explanation clause⁴⁸ as “any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether

⁴⁷ Corresponding Section 85 of Bharatiya Nyaya Sanhita, 2023

⁴⁸ Corresponding Section 86 of Bharatiya Nyaya Sanhita, 2023

mental or physical) of the woman;” Cruelty cannot be defined in exhaustive way because it’s always a question of fact.

VIII. CONCLUSION

Rape is a rape – no relation should immunize it. The irony is women are considered unsafe outside their home but penetrators inside the home are immunized by labelling them with relations. The concern is natural criminalising marital rape would impact the institution of marriage but still it’s not an excuse to not criminalise it as other forms of matrimonial abuse like dowry death, cruelty etc. are criminalised under the law.

Many men still view marriage as transfer of rights over woman’s body ignoring her body, her choice, her likes and dislikes and her autonomy. The ideology is deep rooted in the society. Forcing himself on his spouse for sexual relations without consent is morally wrong and marriage never means implied consent neither it’s a license to forced sexual relations (if you are married then it’s not rape). It’s time to prioritize women’s rights and criminalise marital rape. It is not recognised as an offence in India and receive very little public attention but it is a very serious crime against women. This act is inhumane and victims suffer a prolonged physical and emotional distress and the scars are beyond words.

After 2013 Criminal Law Amendment punishments for rape increased. And after 2017 case (Independent Thought) the age under Section 375 Exception 2 was increased from 15 years to 18 years and the same was incorporated in the Bharatiya Nyaya Sanhita, 2023. Abolishing the marital rape exception would be a progressive step towards a society where woman will be seen as woman rather than married or unmarried, which will uphold her right to equality, right to live with dignity. Apart from this it should be a social responsibility of parents to educate their children to respect woman, her choices and never negate it.

Criminalising marital rape will bring with opportunities and challenges. Pros will be women’s rights will be upheld but at the same time an innocent husband can be framed in fake case and women may use it as a weapon to threaten their husband to fulfil their demands will be the cons. Just declaring it as an offence will not resolve the issue but it must come with guidelines dealing with strict action against fake cases, punishments, compensation to husband and other necessary guidelines required from time to time. The debate focusing whether to criminalise marital rape is yet unclear. The Supreme Court is yet to decide the question as to

‘criminalisation of marital rape.’ Until then women can seek existing remedies available to her by the laws.