

# Marital Rape – Need for Criminalization

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## ABSTRACT

In fact, about 75 percent to 90 percent of rape victims recognise their attacker. The term "marital rape" refers to rape that takes place when the attacker is also the victim's husband or wife. While there has been a significant push to detect and punish rape, marital rape has gotten very little attention in studies and the media. According to studies, marital rape is less serious, less infringing of women's rights, and less psychologically devastating than rape that occurs outside of marriage. According to studies, a variety of variables impact the perception of rape, including the degree of force used and belief systems about women's and men's positions in society. The influence of degree of force on sexual assault is currently understudied, with the existing research focused mostly on stranger rape situations. As a result, the current research looked at the effect of physical force on the impression of marital rape. An online survey was used to poll undergraduate students (N=289). Students answered demographic questions as well as the Illinois Rape Myth Scale and the Attitude toward Women Scale. Students were allocated to one of three marital rape vignettes, each of which described circumstances that lead to a heterosexual married couple having non-consensual sex.

## I. INTRODUCTION

The term "marital rape" refers to rape that takes place when the attacker is also the victim's husband or wife. A sexual act that is committed against a woman who has not given her consent and who then becomes the victim of the act is considered to be rape. Depending on the circumstances, the act may have been carried out via compulsion, abuse, or against someone who was unable to provide consent, such as a woman who was inebriated or asleep. "Rape is a deathless disgrace and the gravest sin in contradiction to the differentiation of individuals," says the Perfect Courtroom. [1] On the other hand, one definition of marital rape is when a woman is coerced into having sexual relations with her husband just due to the fact that the couple is married. This kind of rape

occurs when a woman is forced to have sexual relations with her husband. In the context of this article, "rape" refers to a sort of sexual attack that takes place inside the limits of a private residence. Most of the time, the man who has been attacked is the lady's spouse. It is no longer only an assault, and it is no longer merely mistreatment; rather, it is now a rape, which is both straightforward and uncomplicated. That the accused is the sufferer's spouse makes for a particularly significant distinction in this instance. On the other hand, according to the statement that Hale made earlier, it is impossible for a person to be found guilty of raping his or her wife [2]. It was common practise for a very long time to look at the marriage contract through the lens of an antiquated perspective, which held that the woman made a pledge or gave her assent to devote herself to the husband without conditions and that she would never withdraw this consent. After marriage, the wife was considered to be the husband's property; as a result, the husband was no longer required to get the wife's permission before abusing her. One of the antiquated conceptions of the patriarchal mind-set that has come into conflict with the concept of equality among partners in today's society is the idea that the husband is the master of his wife in a marriage. The rapidly developing society has shifted its focus more toward total equality between spouses, equal protection under the law, and equal rights for both parties in a marriage. It has also helped put light on a variety of problems that have been caused by the outdated architecture of the legislation [3]. Rape is defined as a criminal offence under Section 375 of the Indian Penal Code ('IPC'). In this broad definition, sexual intercourse and other forms of sexual penetration, such as oral sex, are included alongside traditional sexual penetration. However, under Exception 2, the applicability of this provision to sexual intercourse or sexual activities between a husband and wife is specifically excluded from consideration. As a result, under Indian law, if a husband rapes his wife, she has no recourse against him in a criminal court. The language of Section 375 of the Indian Penal Code has been changed as a result of the Criminal Law

(Amendment) Act, 2013:“375. A man is said to commit “rape” if he— 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;”

### 1.1 FORMS OF MARITAL RAPE

There are two different types of rape that may occur inside a marriage: non-physical sexual coercion and sexual activity that is either threatened or coerced. The perpetrators of marital rape utilise social or normative compulsion through non-physical sexual coercion, which appeals belief in 'woman's duty' and the obligation of a wife to fulfil her husband [5].The following three types of marital rape, which have been recognised by legal academics as being typically widespread according to additional classification of threatening or forced form of marital rape [6], are: Battering rape, Obsessive rape and Force-only rape.

### 1.2 CRIMINALIZATION OF SEXUAL ASSAULT DURING PREGNANCY

Because our example shown how criminalising rape in marriage might amount to an unfair interference with the institution of marriage, one of the reasons why rape in marriage should no longer be criminalised is because of this potential interference. Marriage is often seen as a sacred institution that acts as the inspiration for our whole society as a whole. It is readily apparent as being very private, and the state is cautious not to meddle into this delicate ecosystem because of this perception. This is done as a means of protecting the privacy of the residents, and the intrusion of the kingdom into this domain might put that privacy at risk. As a direct consequence of this, the government is unable to force any individual to get married or end their marriage [7]. The fact that the government does not want to intrude on people's private lives, even in exceptional circumstances, may nonetheless provide challenges since it opens the door to the prospect of misconduct. Keep in mind the story of the bride who was mistreated by her groom during the ceremony. The country in issue must intervene into the private sphere of the marriage in question in order to make it possible to criminalise the harsh treatment that one of the partners has endured. 54 In the event that this is not accomplished with the assistance of the country, the woman will be prevented from seeking legal treatment. As a consequence of this, it is essential for the government to conduct random inspections in this supposedly private sector.

## II. LITERATURE REVIEW

Agnes (2015) says that negative messaging by men's organisations, as well as reports from Law Commissions and decisions of the Supreme Court, have had a key influence in reducing the severity of Section 498-A to a point where it is no longer effective. Moreover, she contends that these characteristics have played an important part in portraying the victim as disbelieving and cruel, resulting in the victim being re-victimized by the current criminal justice system. In a similar vein, research has shown that victims of marital mistreatment are projected as a 'legal Frankenstein' and a'monstrous lady' in court narratives (Lodhia, 2009). Such victim predictions have been a key component in the elimination of opportunities for access to justice, and on the other hand, obstacles to access to justice have played a large part in the creation of opportunities for access to justice [8].

According to Cappelletti (1976), access to justice extends beyond the basic right to use the official legal process to seek redress. In his book, Francioni (2007) contends that access to justice is not simply any right, but rather a fundamental human right that must be protected at all costs. In a similar vein, Rhode (2004) points out that victims confront a variety of obstacles when it comes to seeking justice, which might vary from financial or economic hurdles to social barriers. Other studies have discovered that these results are applicable in a substantial way in the setting of women who have been victims of marital mistreatment. Victims of criminal prosecutions in the United States of America were exposed in a study undertaken by Russell (1990) that highlighted their struggles and tribulations throughout their ordeal. Even fourteen years after Russell's results were published, other study in this field confirmed them (Sack 2004). There is no getting around the reality that victims of marital violence all over the globe are susceptible to judicial bias and prejudice, and no amount of violence will be enough to turn the tables in their favour unless the victim suffers fatal injuries and is able to show it in court (Keith, 1992). Similar outcomes were discovered in the Indian environment, according to the study. She discusses her findings regarding the problems experienced by victims in Mahila/Courts Women's in her essay, which includes sexual assault, negative stereotyping, and physical threats to victims even while in the courtroom. Moreover, she sheds light on sexual harassment perpetrated against such victims by their attorneys as well as the unpleasant statements made by them and judges in courtrooms, which minimise the agony of

violence while simultaneously demonstrating embarrassment and disbelief. Moreover, Epstein (2002) explains that various medical factors such as post-traumatic stress disorder (PTSD) or, at a more fundamental level, inability to come to terms with the pressures of a broken marriage may lend an unstable, aggressive, or confused disposition to the victim in such cases, and that this is especially true in cases of matrimonial cruelty where the victim is charming and has a relatively stable disposition. It is also believed that a culture of victim-blaming, which is extensively widespread in courts across the globe, contributes to the development of prejudices of the same sort as those seen in instances involving rape or sexual assault victims (Fields, 1996). Furthermore, she claims that such victims are referred to as 'erring wives,' implying that they must have had a considerable part in triggering violent reactions from their spouses. According to an analysis of existing research, there are significant research gaps, the most significant of which is the pronounced absence of any study on the manner in which special institutional structures created for women function and how they affect the prosecution of women's rights cases, among other things. Furthermore, there is very little Indian research on the challenges encountered by victims of marital cruelty under Section 498-A, and there has recently been a strong sense of the need to fill the gaps that have opened up in this area. Apart from biases and prejudices, it was also discovered that different components of the adversarial process may also provide specific difficulties for victims of marital cruelty who are subjected to violence in private realms, making it difficult for them to generate proof of such abuse. Agnes has drawn attention to the importance of the police as the initial point of contact, as well as their complete lack of interest in filing complaints from victims, in this context (2015).

### III. RESEARCH METHEDODOLOGY

When the subject of raping a spouse in a married relationship is brought up, the first thing that comes to most people's minds is whether or not a guy is legally allowed to rape his own partner [9]. This is due to the fact that entering into a marriage represents the wife's agreement to provide implicit permission to the whole of the situation, including sexual intercourse, even when she does not want to participate in the same. This raises the issue of whether or not it is still legal for a man to rape his own wife in today's society. According to sections 375 and 376 of the Indian Penal Code, 1860, rape is considered a criminal act that might lead to crook prosecution. But whenever the word "rape" is

brought up in the context of a wedding, rather than considering how a person ought to most likely commit this kind of heinous act on his own wife, the focus is on giving reasons about how such an action is justified, and the only justification that is ever given is the fact that they are married.

### 3.1 LEGAL PROVISIONS ON MARITAL RAPE IN THE INDIAN PENAL CODE

The following are the circumstances that, according to the Indian Penal Code (IPC), constitute marital rape as a criminal offence in India [10]:

- A man who has sexual relations with his separated wife without her agreement shall be responsible for rape and will be subject to the appropriate punishment under Section 376B of the Criminal Procedure Code. If a man engages in sexual activity with a judicially separated wife without first obtaining her agreement, the law considers this to be an act of marital rape and protects the woman by recognising it as a kind of legal protection for a judicially separated wife [11].
- Under the provisions of Exception 2, Section 375 of the Indian Penal Code, a woman who is less than 15 years of age is protected against rape committed by her husband. The legal drinking age has now been raised to 18 years [12].

To conclude, only the following two types of married women are covered under rape rules under the International Criminal Court (IPC): Those have age less than 18 years and those who are legally separated from their husbands.

### 3.2 CONCEPT OF CONSENT

When consent ideas were first proposed in the early 17th century, they emphasised the equality of every human being in society, regardless of their gender, and the fact that every person is born free. Therefore, it was only logical to place a high value on the permission expressed by both men and women. Because everyone is "born free," it is impossible for one person to impose his or her will on another without first receiving that person's agreement. According to the preceding views, some kind of clearly defined authority is essential for the maintenance of fundamental law and order in order for all humans to live peacefully together in a community. This power must gain clear approval from every person willingly and without any external influence in order to maintain the liberty and individual identity of every citizen. Therefore, according to the consent theory that was prevalent during that time period, an individual was required to provide their

express assent in each and every circumstance in the absence of any external pressure [13].

### 3.3 Reasons For Non-Criminalisation Of Marital Rape

- When a woman marries a man, she grants her husband her tacit permission to have sexual relations with her anytime he so desires. This assent is known as "implied consent."
- The holy connection of marriage would be shattered if laws were passed that made rape during marriage a crime punishable by death [14].
- In weddings, there is no way to prove that the other party did not agree.
- For example, dissatisfied and vindictive women could falsely accuse their innocent husbands of marital rape, just as there has been an increase in the number of phoney cruelty and dowry cases in recent years [15].

If one were to take a closer look at these reasons, it would become abundantly clear that they are only the excuses of a society that is ruled by males and is devoid of any kind of legal or moral weight. It is not too difficult to refute the reasons that have been presented here. The courts in India, on the other hand, have been much too hesitant to take up allegations of marital rape [21].

In addition, many of the women who have been the victims of marital rape are unable to leave their violent relationships because they are financially reliant on their spouses [16]. This prevents them from leaving their partners who have abused them. If she has children, she has the added responsibility of taking care of them or of leaving them behind and going with her husband. If she does not have children, she does not have this task. If she does not have any children, there may not be any additional responsibilities placed on her. There are some women who, despite the fact that their relationships with their abusive partners are poisonous or violent, will not leave such situations because their dedication to their spouses is stronger than their own pain and suffering.

### 3.4 LEGAL PROVISIONS FOR MARITAL RAPE VICTIM IN INDIA

According to the Indian Penal Code, rape that occurs inside a marriage is not regarded to be a criminal offence. However, there are just a few protections that victims of marital rape may rely on, including the following:

#### 3.4.1 SECTION 498A OF THE INDIAN PENAL CODE, 1860

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is Cognizable, non-compoundable and non-bailable”.

The term "cruelty" refers to any actions that put a woman's life, both bodily and mental, in jeopardy, or have the potential to motivate her to take her own life. This may include acts that injure or endanger the woman's life. It is possible for a woman to cite the fact that her husband raped her during their marriage as grounds to file criminal charges against him [16].

#### 3.4.2 SECTION 354 OF THE INDIAN PENAL CODE, 1860

“Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.” As a result of the fact that this section of the law imposes a punishment on anybody who attacks or outrages the modesty of any woman by the use of force, those who have been the victims of marital rape have the ability to seek legal redress under this provision of the law. Up until very recently, the meaning of the phrase "outraging the humility" had turned into one that was now no longer fully clear. In contrast, the court said in the case of Raju Pandurang Mahale vs. Republic of Maharashtra 2013 that a girl's modesty is judged by the assistance of her intercourse.

#### 3.4.3 THE HINDU MARRIAGE ACT, 1955

According to section 13 (1) of the Hindu Marriage Act, 1955 states that “Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party- has, after the solemnization of the marriage, treated the petitioner with cruelty; Marital rape sufferers can resort to phase 13 (1) for submitting a divorce case towards their husband if the husband has treated her with cruelty.

#### 3.4.4 THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Section 3 of this act states: “any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it - (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse,

sexual abuse, verbal and emotional abuse and economic abuse;” Even while this legislation does not regard raping a spouse to be a criminal offence, it does classify it as a type of domestic abuse. This is important to note. Through the application of this statute, the victims have the ability to secure a judicial separation from her spouse [17].

### 3.5 LEGISLATURE’S VIEW

Exemption 2 of section 375 of the Indian Penal Code, which, among other things, makes it possible for married women above the age of 18 to be raped with no legal repercussions, has been the subject of a number of debates and calls for its abolition. This rule, which previously only applied to women who were at least 18 years old, is being expanded. On the other hand, there have been occasions in which the Indian government has sought to find a way out of claiming that rape committed during the course of a marriage is a criminal offence. In August of 2017, in response to repeated demands for elimination of exception 2 of phase 375 of the IPC, the vital government indicated via a testimonial presented that exception 2 of phase 375 of the IPC will not be deleted. “the central government is of the opinion that the said exception should be deleted.”

“It must be ensured that marital rape is not becoming a regular phenomenon as it will destabilize the institution of marriage and can also be used by women to harass their innocent husbands”.

## IV. RESULT AND DISCUSSION

### 4.1 WHY MARITAL RAPE SHOULD BE CRIMINALIZED?

There is a prevalent mentality that marital rape no longer occurs in Indian culture due to the fact that marriage is revered highly in India; but, when we look at the data, we see a very different image emerge. This is despite the fact that there have been documented incidences of partners abusing one other in India. According to the findings of the National Survey on the Health of Families and Children, approximately one-third of all married women within the age range of 15-49 years had experienced some form of violence at the hands of their partner. This may have taken the form of physical, sexual, or emotional abuse. Eighty-three percent of these women said that the perpetrator is their new spouse, whereas just seven percent of these women said that their former boyfriend was the perpetrator. Approximately 36.5 percent of married women have reported that their husbands had sexually attacked them, causing injuries such as bruises and other forms of physical harm, in addition, of all of the married women in

the age range of 15-49 years who have been victims of sexual violence by means of their spouse, almost 78.6 percent of those women have by no means complained of sexual violence, and most effective 12.3 % of those women have sought assistance from someone else. Similarly, only 0.9% of these women have reported the incident to the police, and only 0.5% of these women have sought assistance from an attorney. In reality, what's happening in India is not that there are no incidents of marital rape; rather, the woman is reluctant to file a complaint about the same because there are no provisions for marital rape in the laws of the united states. In India, women are aware that rape throughout the course of a marriage does not constitute a criminal offence but is nonetheless punishable by the law [14]. In addition, neither the courts nor the legislature are able to protect them if their husband engages in sexual harassment of them, also, we are able to look at the fact that just 1.4% of all people who have been victims of marital rape have any agree with in the judicial device. this is a really low number indeed. The lack of any criminal provisions for rape that occurs inside a marriage is likely to blame for the low range, out of one hundred husbands who participated in the nationwide own family health Survey responded that they do have the right to force their partner to have sexual pastime even if their partner refused to participate in sexual pastime. This indicates that husbands believe they have the authority to coerce their partners into sexual activity even if their partners refuse to do so. eight. In addition, of the males out of a total of one hundred said that they had the right to reprimand their significant others if those significant others declined to take part in sexual activity. Both society as a whole and individual men want their perspectives to change, and one way to do this is by making it a criminal offence to commit rape inside a marriage [18].

### 4.2 Against Making Sexual Assault During Marriage A Criminal Offense

The following are some of the most popular reasons used by the Indian government in opposition to the concept of criminalising rape committed between married couples:

- Marital Rape is uncommon in Indian society.
- It is impossible to establish marital rape, and making it a crime would merely add more work for an already overworked judicial system.
- Possibility of abuse on the part of women who make up rape allegations.

- In a marriage, it is assumed that both partners agree to have sexual encounters.
- The criminalization of marital rape has the potential to result in the dissolution of marriages by eliminating any chance of a successful reconciliation.

Rape is a horrific crime, and the justifications stated by the government for not criminalising rape among married couples are not very compelling. g. Also, the data provided by the National Family Health Survey clearly depicts the extent of marital rape in India. It is essential for the government and the judicial system to have an awareness of the effects or outcomes of marital rape on the victims and provide assistance to them in their pursuit of justice in this area. Although it has been shown that there are many offences that are hard to prove and that there are laws that have been abused, this cannot be a grounds for not recognising incorrect behaviour as an offence. The people have faith in their government because it is "for the people and elected by the people", and they anticipate that it will look out for their best interests. The Indian government typically ignores the concerns of Indian women since it does not consider rape inside a marriage to be a criminal offence. For the many compelling arguments that have been shown so far in this volume, it is high time that rape inside a marriage be classified as a criminal offence.

## V. CONCLUSION

In India marital rape occurs de facto and not de jure. The findings of the National Family Health Survey indicate that marital rape is all too common in India. The Indian judiciary is taking a backward stand in the matter of marital rape by stating that law making is the domain of the Indian parliament and that the parliament has already debated on this matter and has clarified that marital rape cannot be a criminal offence in India. This is an example of how the Indian judiciary is taking a position that is in opposition to the position taken by the Indian parliament. On the other side, the government is of the opinion that making rape within marriage a criminal offence would cause the institution of marriage to become more unstable. Neither the government nor the court are prepared to make rape inside a marriage a criminal offence. What the court and parliament are doing is really shielding the criminals and justifying their crimes in the name of safeguarding marriage. This is happening despite the fact that the judiciary and parliament are supposed to be protecting marriage. It is essential that people recognise that a woman is not the husband's property and that she has equal

rights to personal freedom and the right to privacy. In addition, she has the right to say "no" if she does not feel like engaging in sexual activity, and if the husband uses force or violence to pressurise her into engaging in sexual activity, then it is not consent but rather coercion, and coercion should not be protected under any law. She also has the right to say "no" if she does not feel like engaging in sexual activity. It is possible to commit marital rape if the husband forces the wife to participate in sexual activity without first obtaining her agreement. This kind of rape is not distinguishable from other types of rape in which the victim is not married. In view of the proposal provided by the Justice Verma committee, the exclusion clause<sup>8</sup> that safeguards the act of spouses should be eliminated.

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