



## **ANALYZING THE LEGAL LANDSCAPE SURROUNDING MARITAL RAPE IN INDIA: A CRITIQUE**

**Puneet Chander Joshi**

Ph.D. Scholar, Amity Law School, Amity University, Haryana.

**Dr. Ajay Kumar**

Professor, Amity Law School, Amity University, Haryana.

### **ABSTRACT**

*In the era of women equality and empowerment, the act of retaining marital rape exception clause in Bharatiya Nyaya Sanhita, 2023 by the legislature depicts the patriarchal mindset of the society. Such exception is a gross violation of right to equality (Article 14) and right to life and personal liberty (Article 21) of married women. Towards analyzing the legal landscape surrounding marital rape in India, this paper/chapter aims to shed some light on the topic of marital rape which got marred by the cultural, religious and political quagmire in the times where women empowerment and gender equality is the aim of each and every government across the globe; to explain the historical and social perspective and jurisprudential understanding related to marital rape in India; to elucidate the legal reforms introduced by other countries with the sole aim to eradicate the arbitrary and tyrannical provisions related to marital rape exemption; to highlight how this exception violates women's right to live a dignified and healthy life; and lastly to put forward certain suggestions and requisite measures which need to be incorporated in the legal system so as to guarantee the women to lead a dignified life free from any insecurity and fear.*

**KEYWORDS:** Marital Rape; Gender Violence; Consent; Individual Autonomy; Women's Rights.

### **INTRODUCTION**

Marriage is a form of human relationship which is considered as cornerstone of the society. In Hindus, it is more of a religious sacrament than a contract. Men and women enter into a family life through marriage, mainly for the purpose of begetting and rearing children i.e., to perpetuate the human race. But such pious domestic relationship enters into troubled waters because of the desire for gaining authority over another, misconception of males by considering themselves superior than their female counterparts etc.



Various ancient texts like Manu Smriti entrusted the responsibility of female protection at different stages of life on father (before marriage), then husband (after marriage) and then upon son (after husband's demise). Over ages such authority led to patriarchal mindset in the society which further culminated into actual aggression and sexual maltreatment in marital relationships.<sup>1</sup> Due to old but accepted (or imposed) conventions of the society and several customs/traditions related to marriage, the flawed concept of marital rape got neglected. Over ages and across the globe, marriage has been considered as a permit granting the husband a connubial authority to have sexual intercourse with wife even without the requirement of any kind of consent from her.

Marital rape is basically non-consensual sexual intercourse between husband and wife. The idea of not criminalizing the same explicitly under Indian laws, undermines the requirement of consent and importance of sexual autonomy of woman within the marital relationship.<sup>2</sup> According to United Nations Population Fund (UNFPA, a United Nations agency dedicated to sexual and reproductive health) sexual violence within marriage is experienced by a large proportion of married women (aged between 15 to 49 years). Sexual violence, here, includes beatings and forced sexual acts. As per a report of National Family Health Survey, 29 percent of married women have been exposed to sexual or physical abuse committed upon them by their spouse. In another survey carried out by International Centre for Research on Women, it was found that one in five men used force upon their wives to have sexual intercourse.

In Indian society conversing openly about sex is still considered as a taboo and also because of prevalent orthodox approach (related to man's authority over his wife), our legal system could not muster courage to cover the marital rape under the definition of rape<sup>3</sup> in Section 63 of recently introduced Bharatiya Nyaya Sanhita, 2023 (BNS). Because of exemption of marital rape under penal law (i.e., BNS), it is generally not reported by the victims and they keep on bearing the pain of such inhuman action by their own husband on regular basis.<sup>4</sup>

## **1. MARITAL RAPE: HISTORY, JURISPRUDENTIAL UNDER - STANDING AND ITS TYPES**

Marital rape is non-consensual act of sexual intercourse by a husband with the wife wherein the wife is abused sexually and physically. Here, the consent may be obtained by force, threat of force and/or physical violence. Such shameful practice prevails in Indian society as well as the same is

---

<sup>1</sup> S. Chhibbar, "Sexual violence in private space: Marital rape in India" *Torkel Opsahl Academic EPublisher, FICHL Policy Brief No. 52*. (2016), available at: <https://www.toaep.org/pbs-pdf/52-chhibbar.Criminal> (last visited on October 12, 2025)

<sup>2</sup> S. Jain, "The Marital rape exception: An analysis in the Indian context" *2 Asian Journal Legal Studies* (2014)

<sup>3</sup> Bharatiya Nyaya Sanhita, 2023, s.63

<sup>4</sup> V. Grover, "Marital Rape: Time to recognize spousal sexual violence as a crime" *22 Economic & Political Weekly* 49 (2017).



exempted from the definition of rape in Indian penal laws. The trust and confidence, which are considered as main pillars of this relation, are being tarnished by this disgraceful offence.<sup>5</sup>

In most of the societies across the globe, it has been an accepted norm or practice wherein men had the right to have sex with their wife despite the absence of her wish/will. Marital rape has been exempted from the traditional definition of rape in most countries providing the husband a kind of “License to rape” their wives.<sup>6</sup> The origin of such an exception can be traced back to a statement made by Chief Justice Matthew Hale in 17<sup>th</sup> century in England, which states that husband cannot be held guilty of raping his lawful wife because of presence of mutual matrimonial consent given by her while entering into the marital contract with the husband which she cannot retract. This societal attitude remained untouched until 1960s. But in 1970s, certain feminist movements took place and members of various anti-rape movements demanded the prohibition of marital rape and omission of marital rape exemption. This led to omission of marital rape exemption and finally to recognition of women’s right to sexual/bodily autonomy in certain Western countries. By the end of 20<sup>th</sup> century, many countries finally criminalized marital rape. Now, approximately 152 countries have given recognition to marital rape as crime.

While examining the charges of rape upon husband for forcing his wife to perform oral sex, the Hon’ble Gujarat High Court discussed 3-types of marital rapes<sup>7</sup> which are prevalent in the society are as follows:

(i) Battering Rape

Marital rape generally followed by physical violence or threats of violence. In marital rape cases, women are more likely to experience unnatural sex i.e., oral or/and anal intercourse.<sup>8</sup> In battering rapes, women encounter both sexual and physical violence. Most victims of marital rape fall under this category.

(ii) Force only Rape

In this type of rape, only that much force is used by husbands as is required to coerce their wives for sexual intercourse.

(iii) Obsessive/Sadistic Rape

In this type of marital rape, physical violence, brutal torture and perverse sexual acts are the main elements. Husbands use pornographic materials and force their wives to view the same and coerce them to enact in the same manner.

---

<sup>5</sup> Y. Kumar, “Marital rape in India: A socio-legal analysis” 9(3) *International Journal of Education and Science Research Review* (2022), available at: [www.ijesrr.org](http://www.ijesrr.org) (last visited on November 2, 2025)

<sup>6</sup> D. Finkelhor, & K. Yllo, *License to rape: Sexual abuse of wives* (Holt, Rinehart, & Winston, New York, 1985)

<sup>7</sup> Nimeshbhai Bharat Bhai Desai v. State of Gujarat, 2018, Guj 732

<sup>8</sup> P.L. Peacock, “Marital rape”, in V. Wiehe & A. Richards (eds.), *Intimate betrayal* 55-73 (Thousand Oaks, CA: Sage, 1995)



Apart from the above major categories of marital rape, it cannot be denied that there are various other types of coercion which women undergo and face silently.<sup>9</sup> For example, *social coercion* i.e., social and cultural obligations of marriage because of which women feel pressurized to have sex with husband on regular basis; *interpersonal coercion* i.e., women are pressurized by their husbands to enter into sexual relationship with them under the garb of non-violent threats like they are threatened to withhold money or child support.

Marital rape does not fall within the category of rape and is treated as an extension of domestic violence. Few theories formed the basis of exemption of marital rape from the definition of rape in penal laws of various nations. These theories are based on notions of society deeply rooted in it.

(i) Contractual Theory/Implied Consent Theory

Wife enters into a marital contract with husband which gives him the authority to control her sexual bodily autonomy in return for the protection to her. Thereafter, consent for every marital obligation including sexual intercourse is presumed in favor of the husband.

(ii) Social Constructionism Theory

The idea behind this theory suggests that human perspective is moulded and shaped under the influence of societal constructs. With regard to marriage, it reflects a patriarchal mindset wherein women have been considered as dependent and they lack autonomy over property, earnings and self, etc. After marriage they were presumed to be subordinate and subservient to their husband sans any right to refuse to any marital obligation including sexual intercourse.

(iii) Doctrine of Coverture/Unification Theory

This doctrine says that after marriage identity (legal and individual) of wife merges with that of husband. Thereafter, they are considered as one individual/single unit. The basis of this doctrine is that women lack autonomy and need constant protection as they are incapable of protecting themselves.<sup>10</sup>

(iv) Socialization Theory

Post marriage, wives are expected to become subservient and submissive to do everything to please the men in their families, while husbands are expected to take control and exert authority over their wives.

---

<sup>9</sup> *Supra* note 6

<sup>10</sup> E. Ireland, "Re-examining the Presumption: Coverture and 'Legal Impossibilities' in Early Modern English Criminal Law" 43(2) *The Journal of Legal History* 187–209 (2022), available at: <https://doi.org/10.1080/01440365.2022.2092945> (last visited on October 15, 2025)



## **2. INTERNATIONAL PERSPECTIVE ON MARITAL RAPE**

Globally marital rape has been recognized as violative of human rights of married women and therefore it is being criminalized in many countries.

### **3.1 UNITED STATES**

Until 1976, the laws in United States had marital rape exception clause. But since 1993 spousal rape has been recognized as crime in all states. In America, the accused/perpetrator can be husband or wife and the victim may be spouse of same/opposite sex. Although marital rape is recognized as a crime in all 50 states but punishment for marital rape is lesser than other rape crimes in some states. In South Carolina, the maximum punishment for spousal sexual battery (where aggravated force/violence is used) is 10 years of sentence but the same crime committed by non-spouse attracts 30 years of imprisonment. Moreover, the spouse's act of crime is required to be reported to law enforcement agency within 30 days of the crime. In several states, the statute has provided certain defenses in marital rape cases. For instance, in New York and California, the accused cannot be held guilty of marital rape on the ground of lack of consent due to mental disability or age. In Virginia, to avoid criminal charges on account of marital rape, the spouse (accused) can opt to undergo a counselling or therapy session. States like Mississippi, Nevada and Oklahoma have laws requiring use of aggravated force for being charged under marital rape. So, in United States, many states still have laws that provides loopholes for individuals accused of raping their spouses.

### **3.2 UNITED KINGDOM**

In United Kingdom, marital rape has been declared illegal since 1992. In 1991, House of Lords in *R. v. R.*<sup>11</sup> ruled that any non-consensual sexual act is rape, even within marriage. Thereafter, spousal rape is declared a form of sexual assault under Sexual Offences Act, 2003. Husband shall be said to have committed an offence of marital/spousal rape if he commits a sexual act without the free consent or will of his spouse or ex-spouse. Implied consent is not considered sufficient. Couples who are not legally married but are cohabiting as spouses also fall under this category. The accused can be awarded punishment from 4 to 14 years depending on the facts and circumstances of case (i.e., subject to various mitigating or aggravating factors). Because of requirement of penile penetration in rape, the women cannot be charged with offence of rape, but if she commits sexual act against the will of her spouse/ex-spouse, she can be charged with offence of sexual coercion or sexual assault

---

<sup>11</sup> (1991) 1 A.C. 599 (HL) (England)



### 2.3 CANADA

Under the Canadian Criminal Code, spousal rape was criminalized in 1983 as sexual assault. Like in USA, either husband or wife can be charged under the offence, in case they commit non-consensual sexual activity with their spouse. (Criminal Code, R.S.C., 1985, Canada)

### 2.4 AUSTRALIA

In 1976, marital rape was criminalized in South Australia. By the end of 1981, it was also criminalized in New South Wales and Victoria. In 1994, it was criminalized in all Australian jurisdictions. Husband's immunity was taken away and women's sexual/bodily autonomy and her right to consent to each and every act of sexual activity was thereby acknowledged. (Sexual Offences Act, 1991, Australia)

### 2.5 SWEDEN

In 1965, Sweden acted as a torch bearer and passed laws to criminalize marital rape, thereby becoming the first nation to do so. Earlier, marital rape was classified as less serious offence as the status of relationship between parties was considered a mitigating factor. But, in 1984 law was amended and thereafter relationship status was not considered mitigating factor in the eyes of law. Recently, in 2018, the definition of rape is being expanded and any sexual act without explicit and voluntary consent, is considered as rape, irrespective of the marital relationship between parties.

## 3. LEGAL FRAMEWORK RELATED TO MARITAL RAPE IN INDIA

In statutory definition of rape in India, the consent and free will are laid down as main aspects of the actus reus of the offence. Consent is considered the antithesis of rape. Consent must be real, free and voluntary. Section 63, Bharatiya Nyaya Sanhita, 2023 (earlier section 375, Indian Penal Code, 1872 hereinafter called IPC) defines rape. However, the statute carves out an exception 2 in section 63 which states that sexual intercourse by a man with his own wife is not considered rape provided the age of wife is more than 18 years. This exception provides the support to assumption that there exists an 'implied consent' in matrimonial relations at all times. In other words, it provides the husband a license to have sex with his wife even if she does not consent, thereby sabotaging the sexual/bodily autonomy of married woman.<sup>12</sup> Though there are certain provisions in Bhartiya Nyaya Sanhita, 2023 (hereinafter called 'BNS') and other statutes which can be invoked to protect the rights of married women and to provide legal remedies for violent and non-consensual sexual acts committed by husband. Section 85, BNS (earlier section 498A, IPC) deals with acts of cruelty against married women. This section can be invoked against the husband or his relative for 'willful conduct' of such nature causing grave injury, or danger to life, limb or mental or physical health of the woman, or for harassment of woman with a view to coerce her to meet any unlawful demand for property or valuable security.

---

<sup>12</sup> *Supra* note 2.



Also, to protect the women from domestic violence, ‘The Protection of Women from Domestic Violence Act, 2005’ (hereinafter called DV Act), was brought into effect in October, 2006. For the purposes of this Act, domestic violence includes physical abuse, sexual abuse, verbal, emotional or economic abuse.

Also, section 67, BNS (earlier section 376B, IPC) provides a remedy to married women by criminalizing the marital rape during the period of judicial separation.

Also, the marital rape victims can claim divorce from their husbands on the ground of cruelty<sup>13</sup> as the marital rape is considered as a form of cruelty.

From above mentioned provisions, it becomes clear that Indian Penal laws do not explicitly criminalize the marital rape. Retaining of provisions related to marital rape exception in recently enforced BNS, 2023, reinforced older notions of morality and undermined the sexual autonomy and consent of married women.<sup>14</sup>

The Justice J.S. Verma Committee<sup>15</sup>, which was constituted to recommend the amendments in crimes related to sexual assaults against women and submitted its report in January, 2013, recommended in favor of removal of marital rape exception clause but the recommendation has not been adopted till date. Various arguments and justifications have been put forward in favor of this exception clause. Earlier, it was said that after marriage, identity of wife merged with that of husband. Wives lacked autonomy. They did not have any rights or opinion in the marital life. They were taught to please their husband always.<sup>16</sup> However, post 1970s, these justifications have taken a back seat as women are now considered as equal to men. But now, another justification is given which talks about presumption of implied consent on the part of woman after she enters into a marital contract. Recently, the legislature also ignored the recommendations by Justice Verma Committee of omitting the exception clause for husbands in definition of rape on the pretext that removing the exception clause would amount to interference in private space of marital life.

There is plethora of judgements in cases on the issue of marital rape. Judiciary has, sometimes, given its opinion to government to consider amending the laws related to marital rape by declaring it criminal offence. Various remedies have also been formulated by judiciary at various instances. But, most of the times, the petitions to strike down the exemption clause have been dismissed by the Supreme Court and also the exemption clause has been cited by the courts in cases where husbands have been charged with rape of wife.

---

<sup>13</sup> Hindu Marriage Act, 1955, s.13(1).

<sup>14</sup> V. Kumari, “Gender Analysis of Indian Penal Code”, in A. Dhanda & A. Parashar (eds.): *Engendering Law: Essays in the Honour of Lotika Sarkar* (Eastern Book Company, Lucknow, 1999).

<sup>15</sup> Justice J.S. Verma Committee, “Report of committee on amendments to Criminal Law” (January 23, 2013), available at: <http://www.legal-tools.org/doc/8712ed/> (last visited on November 28, 2025)

<sup>16</sup> I. Jaising, “Marital rape in India: An exploration of legislative and judicial initiatives” 12 *Journal of Gender, Society & Law* 315 (2004).



In the case of *Shri Bodhisattwa Gautam v. Ms. Subhra Chakraborty*<sup>17</sup>, the court held that the act of rape hampers victim's fundamental right to life with dignity thereby violating Article 21 of the Constitution.

In *Harvinder Kaur v. Harmender Singh*<sup>18</sup>, the Delhi High Court, while deciding the question on constitutionality of section 9, HMA (Restitution of Conjugal rights), asserted that application of fundamental rights in the domestic relationship would result in destruction of marital relationship as it will strike at its root.

In a case<sup>19</sup>, the Gujarat High court observed that the time has come for legislature to intervene in the issue of marital rape.

In *Independent thought v. Union of India*<sup>20</sup>, the Supreme Court partly modified the exception clause in section 375, IPC by amending the age of wife from 'fifteen' to 'eighteen' years in consonance with the Protection of Children from Sexual Offences Act, 2012 (POCSO).

In *Khushboo Saifi v. Union of India*<sup>21</sup>, the Delhi High Court delivered a split judgement in a matter involving the issue of criminalization of marital rape. Hon'ble Justice Rajiv Shakhder ruled in favor of striking out the Exception 2, Section 375, IPC which provides that sexual intercourse by husband with his own wife (not below 18 years) is not rape. He observed that this marital rape exception violated the equality clause under Article 14 of the Constitution. As per him, the classification based on relationship between the offender and victim does not have reasonable nexus/intelligible differentia with the object, which the main provision seeks to achieve i.e., protection of women from being subjected to sexual act against her will/consent. On the other hand, Hon'ble Justice C. Hari Shankar ruled against striking out the marital rape exception. He observed that the section does not disallow wife from refusing to sexual intercourse in marital relations. As per him, treating non-consensual sex within marriage differently from those outside marriage is not discriminatory.

#### **4. MARITAL RAPE: VIOLATION OF WOMEN'S RIGHTS**

Post 1970s various countries brought into effect various laws in order to criminalize the marital rape with a view to ensure the gender equality and to acknowledge the individual identity of women and her bodily autonomy. In 1979, the United Nations General Assembly adopted an international treaty i.e., Convention on Elimination of all forms of Discrimination against Women (CEDAW). It was basically an International Bill of Rights for women. It has been ratified by 189 states across the globe. Part IV of the convention which comprises of Article 15 and 16 provides for women's right to equality in marriage and family life. India is also a signatory to this

---

<sup>17</sup> 1996 AIR 922

<sup>18</sup> AIR 1984 Delhi 66

<sup>19</sup> Nimeshbhai Bharat Bhai Desai v. State of Gujarat, AIR 2018, Guj 732

<sup>20</sup> AIR 2017 SC 4904

<sup>21</sup> 2022 SCC Online Del 1404



convention and the treaty was ratified in July, 1993 by India. According to this convention, the Government of India is required to adopt measures for elimination of all forms of discrimination against women with a goal to achieve full equality in all spheres of life. So, it's our government's responsibility to protect women from any kind of violence i.e., physical, sexual or psychological in or outside the family. But retaining the marital rape exception clause in BNS does not conform to the standards and objectives laid down in the convention.

Guarantee of equal status to all before the law as provided under Article 14 of the Constitution seems to be superficial when we read exception 2 to section 63, BNS. Because through this section, the State acted prejudicially against the married women who are being raped by their husbands. This section still retains the essence of colonial era when the woman was regarded as an object and she had no rights or opinion in the matters related to the marital life. But now in 21<sup>st</sup> century, when government has taken hundreds of initiatives for upliftment and enforcement of women and where husbands and wives are considered independent and separate legal entities, retaining such exception shows the patriarchal mindset which is still ingrained in the society. Granting immunity to the husbands from such barbaric act is in contravention to the object, which the penal law ought to achieve, i.e., protection of women from being subjected to sexual act against her will/consent and to penalize those who are involved in such violation. Moreover, in the absence of any reasonable nexus between the distinction carved out by exception 2 and the basic purpose of the Act, the test of reasonability cannot be said to be complied with.<sup>22</sup> Therefore, it is clear violation of article 14 of Constitution of India.

Married women tend to lose their right to bodily and sexual autonomy in the case of marital rape. Such crime further violates her right to have a dignified and healthy life free from any kind of fear and physical/mental trauma. During the last few decades, the Supreme Court vide variety of its judgements elaborated the interpretation of 'Right to life and liberty' guaranteed under Article 21 of the Indian Constitution. In *Puttaswamy judgement*<sup>23</sup>, the Supreme Court recognized that women's right to make reproductive choices is a fundamental right and is protected under right to life and personal liberty under article 21. Also, a woman cannot be said to lose her 'right to privacy' (protected under article 21) after getting married. The effects of marital rape are long-lasting and severe. It includes both physical and psychological consequences.<sup>24</sup> Physical effects of marital rape include but are not limited to vaginal/anal injuries, bruising, torn muscles, pelvic pain etc. Psychological effects include anxiety, intense fear, depression, disordered sleeping etc.<sup>25</sup> So, an act of marital rape may force the wife to live a life full of anxiety, depression, fear etc. ruining the right and ability to lead a dignified life which is clear violation of article 21 of Indian Constitution.

## 5. CONCLUSION & SUGGESTIONS

---

<sup>22</sup> State of West Bengal v. Anwar Ali Sarkar, AIR (1952) SC 75

<sup>23</sup> K.S. Puttaswamy J. (Retd.) v. Union of India, AIR 2017 SC 4161

<sup>24</sup> N. Agarwal, S.M. Abdalla, et.al., "Marital rape and its impact on the mental health of women in India: A systematic review" 2(6) *PLOS Glob Public Health* (2022), available at: <https://doi.org/10.1371/journal.pgph.0000601> (last visited on October 29, 2025)

<sup>25</sup> R.K. Bergen, *Wife rape: Understanding the response of survivors and service providers* (Thousand Oaks, CA: Sage, 1996).



The presence of a clause exempting Marital Rape from the definition of rape in penal code of the country reflects the patriarchal mindset of Indian society where women are still considered as chattel to their husbands, upon whom certain whimsical rights have been bestowed by the legal system of the nation (based on old religious and cultural practices). Such exemption clause has exposed the married women to sexual abuse and violence behind the four walls of her home and that too without any solid recourse which could redress her miserable situation. This shows the blatant violation of Article 14 (Right to equality) and 21 (Right to life and personal liberty) of the Indian Constitution.

The objective behind introduction of marital rape laws is to demolish and decimate the idea of patriarchy which is deeply ingrained in the society and other social norms arisen out of this which often contribute to male supremacy and control over the women's body. In order to promote gender equality and to defend the fundamental rights of women, it is necessary to recognize and acknowledge the value and importance of consent and sexual autonomy within marital relations. This being a pressing concern calls for urgent scrutiny and review. A clear roadmap is required to address and eliminate such a deep-rooted evil of marital rape in India. There is an urgent need to eliminate gender-stereotypes. Traditional gender roles within marriage must also be challenged and redressed.

Perpetrator (accused husband) must be made accountable for his heinous crime and survivor (victim wife) must be provided with due support and protection by means of enacting a fair and reasonable statute or incorporating relevant provision in concerned statutes. There is a dire need to sensitize men (of all ages) about women's importance and their equal participation in development of society so as to educate them and make them sensible enough to shed the patriarchal social attitude. Also, women (of all ages) are required to be educated about their fundamental rights i.e., right to equality and right to life and liberty and also about their sexual and bodily autonomy. They must be made aware so as to liberate themselves from the clutches of patriarchal mindset.

Non-consensual sexual acts within marriage need to be explicitly prohibited and criminalized under penal code i.e., Bharatiya Nyaya Sanhita, 2023. The exception clause i.e., Exception 2, Section 63 must be omitted and marital rape must be covered under definition of rape under section 63. Certain amendments in Bharatiya Sakshya Adhinyam, 2023 should also be taken into consideration so as to avoid obstacles for prosecution in marital rape cases. In order to avoid any difficulty in proving the element of assault or violence in marital rape cases, testimony of doctors (with regard to victim's mental psychological trauma)<sup>26</sup> and testimony of family members (with regard to cruelty and domestic violence) can be used as corroborative evidence.

Also, the legislature must ensure certain safeguards to prevent lodging of false FIRs by wives against husbands. Previous instances of domestic violence, statement of relatives and other

---

<sup>26</sup> R.R. Kallakuru, P. Soni, "Criminalisation of marital rape in India: Understanding its constitutional, cultural and legal impact" 11(1) *NUJS Law Review* (2018) available at: <https://nujlawreview.org/> (last visited on November 12, 2025)



credentials can be looked into to verify the allegations of marital rape in FIR against husband. Destabilization of society also seems to be a hollow justification in favor of non-criminalization of marital rapes. As cohabitation of victim with a person who has been raping her for some time is in itself a quite horrible and traumatic experience.<sup>27</sup> Before passing any law, there are always a chance of it being misused, but instead of being discouraged, the government must look for the positive effects of it which, in any case, shall definitely outshine the risks of its potential misuse. Hence, the issue of marital rape can be addressed by following a comprehensive approach covering legislative changes and by bringing positive changes in societal attitude towards women. Till then, it becomes the duty of courts to interpret Article 21 expansively and recognize the right to refuse sexual intercourse in marital relations under the umbrella of Article 21 i.e., Right to life and personal liberty.

## REFERENCES

- Agarwal, N., Abdalla, S.M., Cohen, G.H. (2022). Marital rape and its impact on the mental health of women in India: A systematic review. *PLOS Glob Public Health*, 2(6): e0000601.
- Bergen, R. K. (1996). *Wife rape: Understanding the response of survivors and serviceproviders*. Thousand Oaks, CA: Sage.
- Bergen, R.K. (Feb 2006). *Marital Rape: New Research and Directions*.<http://www.vawnet.org>.
- Chhibbar, S. (2016). Sexual violence in private space: Marital rape in India. *Torkel Opsahl Academic EPublisher, FICHL Policy Brief No. 52*. <https://www.toaep.org/pbs-pdf/52-chhib-bar.Criminal>
- Finkelhor, D., & Yllo K. (1985). *License to rape: Sexual abuse of wives*. New York: Holt, Rinehart, & Winston.
- Grover, V. (2017). Marital Rape: Time to recognize spousal sexual violence as a crime, *Economic & Political Weekly*, 22, 49.
- Harminder Kaur v. Harmander Singh AIR 1984 Delhi 66
- Independent Thought v. Union of India, AIR 2017 SC 4904
- Ireland, E. (2022). Re-examining the Presumption: Coverture and ‘Legal Impossibilities’ in Early Modern English Criminal Law. *The Journal of Legal History*, 43(2), 187–209. <https://doi.org/10.1080/01440365.2022.2092945>
- Jain, S. (2014). The Marital rape exception: An analysis in the Indian context, *Asian Journal Legal Studies*, 2.
- Jaising, I. (2004). Marital rape in India: An exploration of legislative and judicial initiatives, *Journal of Gender, Society & Law*, 12, 315.
- Justice J.S. Verma Committee, *Report of committee on amendments to Criminal Law* (January 23, 2013). <http://www.legal-tools.org/doc/8712ed/>.

---

<sup>27</sup> *Supra* note 1.



- Kallakuru, R.R., Soni, P. (2018). Criminalisation of marital rape in India: Understanding its constitutional, cultural and legal impact. *NUJS Law Review*, 11(1).
- Khushboo Saifi v. Union of India and Anr, 2022 SCC Online Del 1404
- K.S. Puttaswamy J. (Retd.) v. Union of India, AIR 2017 SC 4161
- Kumar, Y. (2022). Marital rape in India: A socio-legal analysis. *International Journal of Education and Science Research Review*, 9(3).
- Kumari, V. (1999). “Gender Analysis of Indian Penal Code”, in Dhanda, A. & Parashar, A.(editors): *Engendering Law: Essays in the Honour of Lotika Sarkar*, Eastern BookCompany, Lucknow.
- Nimeshbhai Bharat Bhai Desai v. State of Gujarat, 2018, Guj 732
- Peacock, P. L. (1995). Marital rape. In V. Wiehe & A. Richards (Eds.), *Intimate betrayal* (pp.55-73). Thousand Oaks, CA: Sage.
- R v. R (1991) 1 A.C. 599 (HL) (England)
- Shri Bodhisattwa Gautam v. Ms. Subhra Chakraborty, 1996 AIR 922
- State of Maharashtra & Anr. v. Madhukar Narayan Mardikar AIR 1991 SC 207
- State of West Bengal v. Anwar Ali Sarkar, AIR (1952) SC 75

**Statutes: -**

- The Bhartiya Nyaya Sanhita, 2023
- The Bharatiya Sakshya Adhiniyam, 2023
- The Constitution of India
- The Hindu Marriage Act, 1955
- The Protection of Women from Domestic Violence Act, 2005
- The Protection of Children from Sexual Offences Act, 2012
- Criminal Code, R.S.C., 1985, Canada
- Sexual Offences Act, 1991, Australia