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RAPE IS RAPE: EVEN WITH A RING OR SACRED VOWS

AUTHORED BY - NAVNEET PAL

ABSTRACT:

Natural rights or birth rights are often described as inalienable entitlements, where human dignity, autonomy and liberty of an individual are foundational and protect humans from coercion and systematic suffering. These modern socio-legal dilemmas demand expansion, especially in legal redress. The remedy for the grave wrong has still not been compensated, leaving the victim to endure pain and oppression in silence. The hidden truth of marital rape is fabricated as a dark truth of unchecked male dominance, a vicious cycle of control and trapped union. The concept of these sacred unions is derived from sacred vows, unbreakable ties and mutual trust. Marriage does not confer any license to implied consent or proprietary right over the other partner. This denial of Justice stems from the collective social differences, leading to more complexities and policy dilemmas.

KEYWORDS:

Marital rape, non-consensual sex, marital abuse, victim rights, consent, human rights convention, Indian society.

INTRODUCTION:

A sacred union and divinely ordained bond between the two individuals are traditionally perceived through marriage, manifesting eternal commitments and spiritual purity, which collaterally impose mutual rights and obligations upon both parties, including conjugal rights, right to maintenance, inheritance, and property; even so, its dissolution contravenes divine will said as per the ***Hindu Marriage Act 1955***¹. Each religion has a prescribed set of formalities that must be adhered to at the time of marriage, such as ***saptapadi or saat phere*** in Hinduism, and ***Ijab-o-Qubool*** in Islam.² Jurisprudence regards marriage as more of a sacrament rather

¹ Hindu Marriage Act, 1955, Act No. 25, 1955.

² Tanvi Dabbi, Concept Of Marriage In Hindu And Muslim Law, Legal Service India, (14th July 2025, 10:00 am) <https://www.legalserviceindia.com/legal/article-16750-concept-of-marriage-in-hindu-and-muslim-law.html>

than a contractual arrangement, whereas Islam explicitly recognizes contractual elements. These notions and presumptions of implied consent within marriage, especially in sexual relationships, have sparked serious legal and ethical debates across 36³ Countries that have yet to be criminalized marital rape include India. Historically, the roles of both genders are defined, whereas men as dominant and women as submissive and homemakers.

While men are often claimed to be relieved from these limitations and are inherently superior. The word “Rape” stems from the Latin word “Raptus”, which means “to seize”, and under Roman jurisprudence, this act was considered as violent theft – both of person and property. Given a patriarchal paradigm, she was legally construed as chattel to her father and husband; the offence of rape was not against her but against her lawful guardian. These proprietary rights of a husband over her wife by marital contract immune the husband from being prosecuted for raping his wife.

The 19th-century feminist movement sparked a foundational shift in deeply rooted taboos, devoid of accessible contraception and reproductive autonomy, which includes control over their own body and free consent for sexual activities. *The UN Declaration on the Elimination of Violence Against Women* raised concern about sexual offences that expressly encompass marital rape and viewed these oppressions as a violation of dignity, individuals' liberty and self-determination.⁴

In 1736, according to *Sir Mathew hale*, a husband can never be guilty of rape after being married and having his lawfully wedded wife. He assumed that when a woman agrees to marry, which implies her unqualified consent for sex and cannot be taken back later.⁵ This perception alone conveys a patriarchal tradition, a narrow and outdated view of women's rights, where marriage was seen as an enforced contract granting a license and unlimited protection to a husband. *Understanding Marital Rape in a Global Context* by *Kerti Yllo* explains that the wife is incompetent to give consent by herself, and her permanent consent is given by her

³ Anusha Agarwal, Only 36 Countries Have Not Criminalized Marital Rape, India Is One of Them, The leaflet constitution first, (14th July 2025, 10:10 am) <https://theleaflet.in/analysis/only-36-countries-have-not-criminalised-marital-rape-india-is-one-of-them>

⁴ Vibha Yadav, marital rape, Uttarakhand judicial and legal review, (14th July 2025, 11:00 am), < <https://cdnbbsr.s3waas.gov.in/s37a68443f5c80d181c42967cd71612af1/uploads/2025/03/202503191325136963.pdf>>

⁵ Dr. Nico, IS A HUSBAND CRIMINALLY LIABLE FOR RAPING HIS WIFE? A COMPARATIVE ANALYSIS , International Journal of Academic Research and Reflection,(14th July 2025 , 12 : 00 am) < <https://www.researchgate.net/publication/309862078>>

family, who arranges her marriage. This shows how women's sexuality and many other crucial steps of their lives are operated under male dominance.⁶

JUDICIAL INTERPRETATION OF RAPE AND MARITAL RAPE:

According to the *Cambridge dictionary*⁷ “to force someone to have sex when they are unwilling, using violence or threatening behaviour”

According to the *Oxford learner's dictionary*⁸ “The crime of forcing somebody to have sex when they do not want it or are not able to agree to it”.

According to *section 63 of the Bhartiya Nyaya Sanhita 2023*⁹ Rape is defined as non-voluntary sexual intercourse or sexual act by a perpetrator or another individual with a woman against her will or without her lawful consent. It includes penetration of the penis or by any objects or other body parts in the vagina, mouth, anus or urethra and also the act of oral contact involving women's intimate parts.

If Consent is obtained through threats, fear of death or bodily harm, and is not given voluntarily, it is deemed as vitiated. Moreover, a woman is led to believe that a perpetrator is her lawfully wedded husband, and her expressed consent to such deception is found to be invalid. If a woman voluntarily agrees to the sexual activity when she is unable to understand the circumstances due to unsoundness of mind, intoxication, or influence of any material which makes her unconscious, furthermore if a woman is under 18 years of age with or without consent or if she is unable to communicate consent in all such circumstances, a constituted act is rape under the law.

*Section 64 of Bhartiya Nyaya Sanhita 2023*¹⁰ defines punishment for rape as anyone who commits rape shall be punished with rigorous imprisonment of 10 years at least, which may be extended to life imprisonment, along with a fine. Turning to the definition of rape, there are some exceptions to the above interpretations, which comprise the exception of *section 63*¹¹, where it refers to involuntary sexual intercourse by a husband against her will or without her lawful consent, does not amount to rape as long as the wife is above 18 years old.

⁶ < <https://digitalcommons.providence.edu/cgi/viewcontent.cgi?article=1059&context=sbg> >

⁷ Cambridge dictionary, (14th July 2025, 12:30 pm), < <https://dictionary.cambridge.org/dictionary/english/rape> >

⁸ Oxford Learner's dictionaries, (14th July 2025, 12:45 pm), < https://www.oxfordlearnersdictionaries.com/definition/english/rape_1 >

⁹ Bhartiya Nyaya Sanhita, 2023, Act No. 45, section 63, 2023

¹⁰ Bhartiya Nyaya Sanhita, 2023, Act No 45, section 64, 2023

¹¹ Bhartiya Nyaya Sanhita , 2023 , Act No 45 , section 63 (2) , 2023

Hindu Marriage Act 1956 States that both husband and wife have mutual obligations within the conjugal relationship, which consists not only of legal duties, emotional and moral support, but also the right to engage in sexual relationships. Refusal to continue conjugal duties can lead to mental suffering, and the spouse may seek divorce on this ground as per the court. **Domestic Violence Act 2005**¹² Explains domestic violence as a woman who lives within the home and is subjected to sexual abuse, such as forceful penetration, may seek a remedy for this abuse under the given act. Exceptions of section 63 of the Bhartiya Nyaya Sanhita contradict constitutional guarantees of fundamental rights such as **Article 14 and 21**¹³. Article 14 outlines the principle of equality in two different forms: **equality before the law and equal protection of the law**. Nevertheless, married women and unmarried women never enjoy equal protection when it comes to the exception clause that discriminates against both of them. Simultaneously, Article 21 provides the right to life and personal liberty, including the right to dignity, bodily autonomy and privacy. By failing to prohibit this forced conjugal relations transgression, women's right to live with dignity and bodily integrity is compromised. Unsettled provisions, societal trepidations, and strongly tied traditional norms and cultural beliefs portray a failed union with a serene smile.

On October 17, 2017, **Independent Thoughts vs. the Union of India**¹⁴, the Supreme Court of India highlighted the significance of age during sexual intercourse in marriages, where a man has sexual intercourse with a wife who is between 15 to 18 years old, constitutes rape, and addressed long-standing legal inconsistencies concerning child marriages in prospective effect. However, the court has not made any explicit statement directly on the exception of rape but has tried to focus more on the girl's safety and her choices for the future. While **Protection of Children from Sexual Offences 2012**¹⁵ Signifies that the consenting age for conjugal act is 18 years, whereas the **Indian Penal Code of 1860**¹⁶ implies a minimum legal age for marital intimacy is 15 years of age, which implies perpetual consent to her husband. Later, the court resolved this policy discrepancy and held these assumptions legally untenable. Landmark judgement of **Nimesh Bhai Bharatbhai Desai v. State of Gujarat**¹⁷, Gujarat High Court, per Justice J.B. Pardiwala, where he addressed the allegations of non-consensual unnatural sex

¹² Domestic Violence Act, 2005, Act No. 43, 2023

¹³ Indian Const. art 14 and 21

¹⁴ Independent Thought vs Union of India , AIR 2017 SUPREME COURT 4904.

¹⁵ Protection of Children from Sexual Offences Act, 2012, Act No. 32, 2012.

¹⁶ Indian Penal Code, 1860, Section 375, Act No. 45, 1860.

¹⁷ Nimeshbhai Bharatbhai Desai vs State of Gujarat, 2018 SCC OnLine Guj 732

made by the wife, stating it as marital rape. Husband's counsel took the defence of the exceptional clause, which does not recognize marital rape as a punishable offence, and the complaint could fall under *section 497A of the Indian Penal Code 1860 (cruelty)*.¹⁸

The court examined the matter and framed this issue in the following set of questions:

- Whether a wife can file a rape complaint under 375 of the IPC?
- Whether the said act constitutes unnatural intercourse or not under section 377 of the IPC?
- Is the concept of marital rape given under the existing provision?¹⁹

Through a comprehensive analysis of the issues Court affirms that the wife can prosecute her husband for unnatural sex under *section 377²⁰* of the IPC, but this prosecution has curtailed its submission in case of rape given under *section 375²¹* of the IPC. The court stressed this obsolete doctrine of implied consent and acknowledged women's bodily autonomy and dignity.

On May 11, 2022, in the case of *RIT FOUNDATION VS. UNION OF INDIA*²², A two-judge bench of the Delhi High Court gave a split decision on the issue of marital rape, in which *Justice Rajiv Shukdher* said that the protection of the husband under the exception clause is arbitrary and unconstitutional. Both husband and wife have absolute rights to say *YES OR NO* and complete authority over their bodies. The union of two people should never be confused with implied consent from each other.

On the other hand, *Justice C. Hari Shankar* said that the law is not wrong and unfair; furthermore, he added law treats marriage and other unions differently. Under him, these differences sound reasonable, devoid of rights (*Article 14*).

GLOBAL NORMS AND STATISTICAL LENS:

*Convention on the Elimination of All Forms of Discrimination*²³ Unveils that India fails to adhere to the standard of international human rights, notably those that safeguard women from

¹⁸ India Penal Code, 1860, Section 497 A, Act No. 45, 1860

¹⁹ Shukhmandeep Singh, Unnatural sex offence , Ipleader, (15th July 2025 , 3 pm) < <https://blog.ipleaders.in/unnatural-sexual-offence/>>

²⁰ Indian Penal Code, 1860, Section 377, Act No.45, 1860.

²¹ Indian Penal Code , 1860 , Section 375 , Act No. 45 , 1860.

²² RIT FOUNDATION VS. UNION OF INDIA , W.P.(C) 284/2015

²³ Convention on the Elimination of All Forms of Discrimination, United Nations, (14th July 1:00 pm) < <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>>

discrimination and rape. According to **Article 1** of CEDAW, which elaborates discrimination as treating women unjustly insofar as they are women and bars them from enjoying their rights to the fullest. The exception clause of Section 375 of the Indian Penal Code 1860 runs inconsistently with CEDAW because the law does not punish a married man who has forced sexual intercourse against her wife's will or lawful consent. **General Recommendation 19 (GR-19) of CEDAW** clarifies that physical and mental harm is a subset of discrimination, which is inclusive of the right to good physical and mental health.²⁴

Rape can be either done by a stranger or by her husband; both can cause physical and mental apprehension to a woman, which makes her incompetent to fully enjoy her human rights and freedom. GR-35, which updates GR-19, says that rape is rape even if it is done within or outside the union sphere, not recognizing marital rape as a heinous crime defies basic human rights and freedom. Indian laws distinguish between married and unmarried women when it comes to the foundational concept of equality, which infringes **Article 26 of the International Covenant on Civil and Political Rights (ICCPR)**²⁵ That underlines equality in all forms. The **Beijing Declaration**²⁶ Asks countries to eliminate unfair or discriminatory laws and adhere to the rule of CEDAW, keep any exceptions to a very limited and agree to optional protocols.

Violence against women (VAW) is now seen as a taboo for health and infringement of basic human rights. Lack of resources, reliable data, and practical challenges are making research more difficult on this sensitive issue. By 2030, the **Sustainable Development Goals** aim to stress the significance of tracking and reducing violence. **Demographic and health surveys (DHS)** provide valuable information about how woman fails to reveal sexual violence by their husband because of cultural beliefs and traditional norms.

According to the survey, the **World Health Organization (WHO)** and **United Nations Population Fund (2000)**, around the world, 30% women and 6 % to 59 % women from the age group 15 to 49 have experienced physical and mental abuse by their husband or somebody else during their lifetime. **The National Family Health Survey (NFHS) and the National Crime Records Bureau (NCRB)** are two primary sources in India which share data on violence

²⁴ CEDAW General Recommendation No. 19: Violence against Women, Division for the Advancement of Women, (14th July 2: 00 pm) < <https://www.legal-tools.org/doc/f8d998/pdf/&ved=2ahUKEwi4r8KY2dX>>

²⁵International Covenant on Civil and Political Rights, Wikipedia, (14th July, 3:00 pm) < https://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights>

²⁶ Beijing Declaration, Wikipedia , (15th July, 10 : 00 am) < https://en.wikipedia.org/wiki/Beijing_Declaration>

against women. After cross-analysis of NFHS and NCRB was found that only 1% women bravely report violence against husbands to the police. *International Men and Gender Equality* found that approximately 20% of the men forced their wives to have sex with them against their consent. An NGO called the *Joint Women's Program* in New Delhi reported that 14.29% women had encountered with the forceful intercourse by their husbands at least once in their lives and failed to report this to the appropriate authority. 26 % of women in Pune, 23 % in Bhubaneswar and 16% in Jaipur often had intercourse against their consent said by *International Institute of Population*.²⁷

CAUSES AND IMPACT OF MARITAL RAPE:

Patriarchal mindset and androcentric worldview are not only qualified as deeply rooted causes and social stigma but also portray this patriarchal society as dominant and authoritative in position. As a result of social and cultural conditioning, marriage is more of a transfer of power than a mutual partnership for life, which asserts dominance, power and control. The husband has absolute rights over everything, including unlimited sexual rights and bodily property. Women must be obedient, submissive and dependent on their husbands. In India, marital rape has still not been considered a criminal offence in any statute, even if it ensures safety to husbands through its exception clause, which has been provided under section 63 of the *Bhartiya Nyaya Sanhita 2023*. This legal privilege allows a husband to act fearlessly without any concern of punishment, whereas women must compromise with injustice due to its legal exception and as a means to protect family honour.

Studies and Research show that Alcohol, drugs and other intoxicating substances are the leading factors in marital rape and other forms of domestic violence. Under the influence of these substances, a husband fails to pass rational judgment or is unable to understand circumstance, loses his temper or self-control and often crosses boundaries of mutual respect. Regular consumption of such substances leads to increased aggression and loss of inhibition, which causes heightened violent tendencies. Wives are expected to “adjust” or remain silent with this pattern of alcohol-based abuse and perceive it as normal, or part of their married life.

A woman's life is socially and economically divided into two distinct phases, where before marriage, she relies on her father for necessities such as food, shelter, education, health care

²⁷ Dr. Yogesh Kumar, MARITAL RAPE IN INDIA - A SOCIO-LEGAL ANALYSIS, Volume – 9, IJESRR, Page No 6, 2022.

and financial support. After marriage, her responsibility transferred to her husband, who is expected to support her emotionally, physically, socially and economically. In both scenarios, women are positioned in a state of dependency on somebody to maintain their cycle of living. Women in society are limited to household activities, caretaking and fulfilling marital duties; in contrast, men are decision makers, especially in financial and other household-related matters.

Women who have been subjected to forced penetration in a matrimonial union leave the victim with deep psychological trauma and scars, which are usually unseen, unspoken and untreated as compared to victims of rape. Psychological impacts such as post-traumatic stress disorder are often experienced with flashbacks, nightmares, hypervigilance and emotional numbness. Survivors suffer from chronic depression, anxiety attacks and suicidal thoughts. This mental breakdown of the victim forces her to lose her faith in this long-term commitment, leading to feelings of guilt, shame and helplessness, which often pushes women to withdraw herself completely from their loved ones.²⁸

CONCLUSION:

One of the most ignored, widespread forms of gender-based violence is marital rape, which is legalized because of its sacred union and socio-traditional norms. Marriage creates a fundamental structure for long-term commitment with mutual trust and love, along with unlimited support and care. Marriage is often regarded as a sacred union of two individuals bound with sacred vows and rituals, coupled with mutual obligations that must be performed together by both individuals. Dissolution of the marital bond opposes divine principles, moral and spiritual order. The Convention on the Elimination of All Forms of Discrimination (CEDAW) declares marital rape as a serious violation of human rights through its global recognition. Despite Indian laws violating the basic principles of human rights, and still fail to declare marital rape a heinous crime. Section 375 of the Indian Penal Code 1860 shields and provides legal immunity to the Indian husband through its exceptional clause, a patriarchal mindset that treats women more of their property rather than as agents of their bodies. The perception of implied consent within matrimonial alliance perpetuates injustice and depicts normalization. This legal silence and denial of justice leave the victim in a vulnerable state, which leads to psychological suffering, trauma and unheard voices. As a consequence of

²⁸ Brisa Victorio, The Effects of Marital Rape on Women's Mental Health, Volume 11, 2023.

economic dependency, fear of society and legal protection compels women to speak less on this matter. There is a pressing need to highlight the importance of all sets, which specifically include lawmakers, law enforcers, law regulators, and health care providers for both mental and physical health. Old norms should be replaced with new ones in which sexual violence must be accepted, education on consent, gender equality and human rights must be a part of the public disclosure. Every woman has the right to live her life with dignity, autonomy and respect within or outside the marital relationship as guaranteed under the Indian Constitution. She must have the freedom to choose her way, her body, with absolute control regardless of whether she is in union or not.

