

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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WEDLOCK OR DEADLOCK? FROM VOWS TO VIOLENCE: A GLOBAL LEGAL PARADOX.

AUTHORED BY- SAKSHI AMIT SAWANT

Abstract:

“Rape is a Rape, regardless of the relationship between the victim and the perpetrator”¹ The article explores the historical background, legal advancement, and case laws that have influenced the recognition of marital rape in various jurisdictions. It provides a comparative analysis of legal system from different nations, highlighting both the advancement made in making spousal rape a crime and the ongoing difficulties. Worldwide, marital rape is still a controversial legal topic, with notable differences in how it is recognised and punished in various nations. Some countries still maintain antiquated beliefs that suggest consent inside marriage, even if others have eliminated the marital rape exemption and granted spouses complete legal protection. To provide justice and Protection for everyone, regardless of marital status, the study emphasises the critical necessity for consistent worldwide recognition of marital rape as a criminal act.

Introduction:

Marital Rape- Any **non-consensual sexual contact or sexual violence** done by one spouse against the other within a marriage is referred to **as marital rape, also called spousal rape**. Despite marriage’s social and legal acceptance, it is a type of sexual assault in which permission is disregarded, lack of consent is essential element.²

Justice Verma Committee³- *Any non-consensual penetration of a sexual nature should be included in the definition of rape. The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to*

¹ <https://www.livelaw.in/rape-wedlock/>

² https://en.wikipedia.org/wiki/Marital_rape

³ <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary#:~:text=However%2C%20an%20exception%20to%20the.irrevocable%20consent%20to%20sexual%20acts.>

marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant.

FBI Uniform Crime Reporting⁴- *The UCR Program counts one offense for each victim of a rape, attempted rape, or assault with intent to rape, regardless of the victim's age. Non-consensual sexual relations involving a familial member is considered rape, not incest. All other crimes of a sexual nature are considered to be Part II offenses; as such, the UCR Program collects only arrest data for those crimes. The offense of statutory rape, in which no force is used but the female victim is under the age of consent, is included in the arrest total for the sex offenses category.*

World Health Organisation WHO⁵- *Sexual violence encompasses acts that range from verbal harassment to forced penetration and an array of types of coercion, from social pressure and intimidation to physical force. Sexual violence includes, but is not limited to:*

- 1. rape within marriage or dating relationships*
- 2. rape by strangers or acquaintances*
- 3. unwanted sexual advances or sexual harassment (at school, work etc.);*
- 4. systematic rape, sexual slavery and other forms of violence, which are particularly common in armed conflicts (e.g. forced impregnation);*
- 5. sexual abuse of mentally or physically disabled people;*
- 6. rape and sexual abuse of children; and*
- 7. 'customary' forms of sexual violence, such as forced marriage or cohabitation and wife inheritance.*

History⁶- The historical Evolution in the relation of widely accepted martial sexual intercourse without consent to its criminalisation, nations has seen a vast range of distinguish and progress. Older Research stated, Rape and sexual assault were not criminalised when committed in context of intimated relationship. Prior to the 1970s, most states had a marriage contract that gave a husband the freedom to have sex with his wife whenever he wanted.

⁴ <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/rape>

⁵ https://iris.who.int/bitstream/handle/10665/77434/WHO_RHR_12.37_eng.pdf

⁶ <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

However, women's rights organisations started the anti-rape movement in the 20th century, particularly since the 1970s, and demanded that women have sexual autonomy over their bodies, including in marriage. As a result of the growing recognition of these rights, as of 2019, approximately 150 countries have made marital rape a crime.

Although marital rape is illegal in many nations, India does not now prohibit it outright, with the exception of certain situations. Lesotho, Namibia, South Africa, and Swaziland have enacted laws that criminalize marital rape. "No marriage or relationship of any kind shall constitute a defence to a charge of rape under this Act," reads the Namibian Combating of Rape Act (2000).

In the 2002 case of Forum for Women, Law and Development (FWLD) vs. His Majesty's Government/Nepal (HMG/N), the Supreme Court of Nepal ruled that the exemption for marital rape was unconstitutional and in violation of both the Convention on the Elimination of All Forms of Discrimination Against Women and the International Covenant on Civil and Political Rights. The Criminal Code (Sexual Offences and Crimes against Children) Act 2002, which was introduced in Papua New Guinea in 2003, eliminated marital exemption with regard to rape.

CEDAW General Recommendation No. 19:⁷ Violence against Women: Article 16 (and Article 5): 23. *Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.*

Challenges:

1. Religious and Cultural Barriers Make It Difficult to Criminalize Marital Rape:

A wife is expected to be sexually available to her husband in many societies that

⁷ <https://www.legal-tools.org/doc/f8d998/pdf/&ved=2ahUKEwi4r8KY2dX>

consider marriage to be a holy institution. It might be challenging to question strongly ingrained patriarchal standards in certain countries where religious beliefs mandate that a wife's agreement is presumed upon marriage. Legal reform is frequently thwarted by a fear of upsetting family structures and disrespecting customs.

2. Legal Obstacles:

Similar to IPC Exception 2 in Section 375, the BNS Exception to Rape maintains antiquated legal theories by continuing to exempt marital rape unless the victim is younger than 18.

Doctrine of Coverture: According to this archaic theory, a wife's legal identity is inextricably linked to her husband's, rendering her unable to refuse assent.

Position of the administration: The administration has maintained that making marital rape a crime could cause family instability and encourage legal abuse.

3. Concerns about Enforcement

Difficulty in Proving Lack of Consent: Marital rape frequently takes place in solitude, making prosecution challenging, in contrast to stranger rape, where tangible proof may be accessible.

Law Enforcement Reluctance: Instead of considering it a crime, police may be reluctant to report it, citing marital conflicts.

Absence of Particular Provisions in BNSS for Marital Rape: Although BNSS regulates criminal proceedings, it does not offer particular rules for addressing incidents of marital rape, which makes it more difficult for victims to pursue justice.

4. Lack of Reporting and Social Stigma

Fear of Social Repercussions: If women report marital rape, they frequently worry about being held accountable, shunned, or losing their financial support.

Family and Community Pressure: Rather than pursuing legal action, many victims are under pressure to "adjust."

Low Awareness: Many women are reluctant to disclose marital rape because they are unaware that it is a violation of their human rights.

Legal Framework (As Per BNS & BNSS)

The legal landscape surrounding rape laws, including marital rape, has remained largely

unchanged since the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, which replaced the Indian Penal Code (IPC), 1860, and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaced the Code of Criminal Procedure (CrPC), 1973.

⁸**Section 63** of the Bharatiya Nyaya Sanhita (BNS), 2023 (Definition of Rape)

The BNS defines rape as non-consensual sexual contact with a woman, which is similar to Section 375 of the IPC.

An exception to Section 63

The marital rape exception, which states that sexual contact between a husband and his wife who is older than eighteen is not regarded as rape, is maintained by the new law.

Thus, unless the wife is younger than 18, marital rape is still not illegal in India.

Key Issue: BNS maintains the marital rape exception, citing societal and familial stability, despite discussions about eliminating it.

⁹**Act of 2005 to Protect Women from Domestic Violence (PWDVA)**

Under the new legal framework, the PWDVA, 2005, which is still in force, acknowledges marital sexual abuse as a type of domestic violence. It does not, however, make marital rape a crime; instead, it offers civil remedies including protection orders against the violent partner.

financial support and restitution for the victim. Legal help and residence rights.

Limitations: Because marital rape is not considered a criminal violation by the law, victims have few legal options.

The 2013 Criminal Law (Amendment) Act and Current Events

In the wake of the 2012 **gang rape case in Nirbhaya**, the Justice Verma Committee¹⁰ suggested: Making marital rape a crime, Eliminating the rape law's exemption for husbands

The administration, however, disregarded this suggestion, stating:

⁸ https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf

⁹ https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection_of_women_from_domestic_violence_act%2C_2005.pdf

¹⁰ <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>

The danger of legal abuse. Possible effects on marriage as an institution BNS (2023) maintains the same legal stance as the IPC (1860) by continuing to omit marital rape from its definition of rape.

Court Declarations Regarding Marital Rape

1. **Union of India v. Independent Thought (2017)**¹¹

Even if a couple is married, the Supreme Court of India ruled that having sex with a wife who is younger than 18 is rape. While this ruling preserved the exemption for adult women, it was a first step toward acknowledging marital rape.

2. **Union of India v. RIT Foundation (2022)**¹²

The Delhi High Court received a petition contesting the marital rape exception. One judge ruled that marital rape was illegal, while the other upheld the marital rape exception. The court returned a split decision. The Supreme Court of India is now considering the matter.

3. **The Delhi Special Fast Track Court ruled in the State v. Vikash, 2014**¹³

In the case that "the petitioner and respondent (accused) being a legally married husband and wife, the petitioner being major, the sexual intercourse between the two, whether forcible, cannot be considered as rape and no conviction can be fixed upon the accused."

The Supreme Court stressed in the **State of Maharashtra v. Madhkar Narayan**¹⁴ case that every woman has the right to her sexual private and that her privacy cannot be violated by anyone at will. As a result, the marital exception theory, which decriminalizes marital rape, violates a married woman's right to sexual privacy and makes it unlawful.

The Path Ahead

1. BNS (formerly IPC) amendment: To make marital rape a crime, Exception 2 in Section 63 of the BNS (formerly Section 375 of the IPC) must be removed. Married women will have legal protection if marital rape is recognized as a crime.

¹¹ <https://indiankanoon.org/doc/87705010/>

¹² <https://www.lawadda.in/2024/01/22/case-comment-on-rit-foundation-v-union-of-india/>

¹³ <https://indiankanoon.org/doc/135896800/>

¹⁴ <https://indiankanoon.org/doc/524900/>

2. **Recognition by the Judiciary:** A significant precedent may be established by the Supreme Court of India's impending ruling on marital rape. Women's rights could be strengthened and legislative action compelled by a positive verdict.
3. **Knowledge and Instruction:** To dispel the illusions around marital consent, society must evolve. Legal literacy, media campaigns, and educational initiatives can all support the notion that marriage does not automatically entail consent.
4. **Mechanisms for Victim Support:** Provide survivors with legal aid, counselling, shelters, and helplines. Improved law enforcement training is necessary to handle cases of marital rape in a tactful manner.

Conclusion:

In India's legal system, marital rape is still a serious but often ignored problem. Despite the fact that marital rape is acknowledged and illegal in many nations, Indian laws, such as the Bharatiya Nyaya Sanhita (BNS), 2023, continue to shield spouses from prosecution on the grounds of social and cultural considerations. The fundamental right of women to physical autonomy and dignity is undermined by this legal position.

The future of India's legislation pertaining to marital rape will be greatly influenced by the legal system, particularly the Supreme Court's impending ruling. However, in order to give married women similar protection under the law, legislative changes are necessary, especially the elimination of Exception 2 in Section 63 of the BNS.

Social change via education, awareness, and victim support systems is required in addition to legal improvements. It is necessary to dispel the myth that marriage entails unqualified permission and work to guarantee that survivors have access to legal assistance, therapy, and housing.

The way forward is a comprehensive strategy that incorporates institutional assistance, societal awareness, judicial enforcement, and legal recognition. In addition to being required by law, acknowledging marital rape as a crime is also morally and human rights-based. Millions of women will still be denied justice in their own homes in the absence of such reforms.