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# **“HUMAN RIGHTS OF A MARRIED WOMAN IN THE CASE OF MARITAL RAPE IN INDIA”**

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## **ABSTRACT**

This comprehensive study offers an in-depth exploration of marital rape, encompassing its legal foundations and the multifaceted aspects of both perpetration and victimization. Despite the recognition of rape within criminal law in India, the critical issue of marital rape remains unrecognized as a criminal offense. Instead, it has often been treated as an exception or defended as non-criminal conduct. Over the past few decades, there has been a growing advocacy movement seeking recognition for marital rape as a crime, yet progress beyond heightened awareness has been limited. The study focuses on the fundamental human rights implications surrounding marital rape, a pressing societal concern that profoundly impacts all married women. The researchers specifically delve into the complex legal jurisprudence concerning the criminalization of marital rape, aiming to unravel its implications and address this significant social challenge.

**Keywords-** *Marital Rape, Criminalization, Fundamental human rights, Jurisprudence, Social challenge.*

## **INTRODUCTION**

Sati Pratha, child marriage, forced marriage, the Devdasi system, the Purdah system, and other social evils have all existed in India since the beginning of time. While many of these social evils have faded away over time, some are still very much in place and continue to cause problems for India. Marital rape is one of these societal evils; it has been practiced in India from ancient times and is still common there now. That is one such severe societal ailment that has persisted throughout India's history and is now a common occurrence there. The threat of marital rape is likewise met with a degree of indifference by Indian culture and the Indian legislation. On the other hand, as is clear from its numerous historic rulings, the Indian court is not so much apathetic

towards the atrocity of marital rape as it is supportive of its eradication from the nation. In India, there is no legal prohibition on marital rape, unlike in most other countries around the world, where it is considered a crime.<sup>3</sup> There are no laws in India that effectively address the problem of marital rape.

All that is involved in marital rape is rape. Apart from the fact that the husband is the only person who can commit marital rape, there aren't many differences between the two. Marital rape occurs when a husband engages in non-consensual sexual activity with his spouse. Marital rape also occurs when a wife engages in non-consensual sexual activity with her husband. Therefore, although marital rape is a gender-neutral offence, the husband is often the one who commits the crime rather than the wife. While it is not unusual for a wife to rape her husband, there are extremely few documented cases of this happening worldwide. Undoubtedly, having sexual relations throughout a marriage is essential, but rape during a marriage is wholly opposed to the idea of marriage.

## **RESEARCH OBJECTIVES**

1. To examine existing laws and policies pertaining to marital rape in India, legal loopholes, and the effectiveness of legal protections for married women against rape by their spouses
2. To assess the need for legal and policy reforms concerning marital rape, evaluating the gaps in existing laws, the implementation challenges, and potential solutions for enhancing legal protections and support mechanisms for victims
3. To investigate the physical and mental health consequences of marital rape on women, analysing the long-term effects on their well-being, including trauma, reproductive health issues, and implications for their overall quality of life.

## **RESEARCH METHODOLOGY AND DESIGN**

### **1. Secondary Research:**

Secondary Research was conducted by the researchers to understand the legal background of the stance of Marital Rape in India by examining case laws, statutes, and scholarly discussions.

### **2. Ethical Analysis:**

Ethical analysis was conducted by reviewing philosophical and ethical principles

underpinning the denial of criminalisation of Marital rape. This involves an in- depth exploration of legal and ethical theories supporting or challenging the state's stance.

### 3. Historical and Cultural Exploration:

Investigated the historical and cultural factors influencing the movement in India. This includes examining legal traditions, cultural norms, and historical events that have shaped policies related to rape.

## THE MARITAL RAPE EXCEPTION

### 1. Rests on historical foundations

One common argument used to maintain the non-criminalization of marital rape against women above the age of 15 is that entering into a marriage implies implicit agreement. Implicit consent has its roots in the legal framework left over from the British occupation of India. In order to comprehend the genesis of the argument, a historical, retroactive viewpoint is necessary. In his seminal dissertation, English jurist and judge Sir Matthew Hale said in 1736:

"The wife has given herself up to her husband in this way by their mutual matrimonial consent and contract, which she cannot retract, so the husband cannot be guilty of a rape committed by himself upon his lawful wife."

With this in mind, it is clear that the wife is seen as her husband's property. The common law notion of coverture was justified in 1753 by English jurist Sir William Blackstone, which is another historical reason why marital rape is not recognised as a crime.<sup>38</sup> In doing so, Sir William Blackstone said that:

"Upon marriage, a husband and wife become one legal person. This means that the woman's legal existence is suspended or at least combined<sup>1</sup> with her husband's during the marriage, and she performs all of her tasks under his protection, cover, and wing. This period of time during which she is married is known as her coverture."

Therefore, it may be said that the decision in India to keep rape inside marriage legal was influenced by these historical precedents. Thus, if marital rape is not made illegal, the husband is protected from prosecution and cannot be held accountable for raping his wife in India. Therefore, the marital rape exemption incorporates immunity for marital

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<sup>1</sup> G.V. Akshaya and M. Kannappan, A study on Marital rape in the Indian Legal, Scenario, International Journal of Pure and Applied Mathematics, Vol 119 no. 17, 1089- 1100, 2018

rape, a common law notion.

It is crucial to note that several jurisdictions have removed the immunity for marital rape, as was shown in *Independent Thought v. Union of India*<sup>2</sup>. In addition, the House of Lords noted in England and Wales in 1991 that since Hale articulated his conception of marriage, opinions towards wives have evolved (as demonstrated in the opening paragraph of this section).<sup>3</sup> The idea that a woman is only a "subservient chattel of the husband" has been superseded by the modern perspective, which holds that marriage should be viewed as an equal partnership. In this instance, it was also observed that the European Commission of Human Rights declared in its Report on C.R. against the United Kingdom that the fact that a rape has occurred does not alter, notwithstanding the nature of the relationship between the perpetrator and the victim. On the other hand, it is evident that the Indian legal system upholds the belief that implicit consent after the dissolution of a marriage in order to defend the continuation of the marital rape exemption. This implies that a woman forfeits her autonomy over her body the moment she marries, with the understanding being that she should be at the man's disposal for his need for "closeness."

## 2. Cultural Relativism

The argument in favour of keeping marital rape legal in India is that there are significant cultural differences between India and the rest of the world, and as a result, the concept of marital rape is not applicable there. This is because the rest of the world and India have very different views on marriage. This is supported by the claim that marriage is a sacrament, as well as by morals, social norms, and religious beliefs. These factors, along with India's low level of education, illiteracy, and growing percentage of poverty, create an environment that makes it inappropriate to criminalise marital rape. The argument's proponents contend that making marital rape illegal violates the sacrament of marriage's intimate nature. The general consensus is that family issues can be resolved inside the family and that criminalising marital rape will have an impact on the family system as a whole. It should be noted that public statements made by ministers are one source of these arguments. When "high-ranking" individuals who have the power to affect Indian society and the legal system express their opinions in public, the Indian populace is free

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<sup>2</sup> *Independent Thought vs. Union of India & Anr.* (2017) 10 SCC 800

<sup>3</sup> *Supra* Note 1.

to accept and share these viewpoints without challenging them or developing their own opinions.

Overall, it is clear that those who support keeping marital rape legalised believe that it should be viewed through the lens of cultural relativism.<sup>4</sup> This viewpoint implies that culture shouldn't be evaluated based on the standards of other nations concerning what is "considered" normal or abnormal, right or wrong. Rather, the goal is to view the nation under examination from "its own cultural context." This means that one should view India's perspective on marriage and its connection to marital rape from an Indian perspective rather than one based on what the outsideworld believes marriage "should" be.

The Supreme Court has rejected the notion that criminalising marital rape destroys the institution of marriage because it is a cultural value that should be viewed as a sacrament. The Supreme Court held in *Independent Thought v. Union of India*<sup>5</sup> that as marriage is inherently personal, the institution of marriage cannot be destroyed by making marital rape a crime. Furthermore, the Supreme Court made clear that, just as there is a belief that neither divorce nor formal separation undermines the institution of marriage, there is also a chance that the idea of marital rape does the same. Furthermore, in *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, the Gujarat High Court<sup>6</sup> noted that the institution of marriage is destroyed by the occurrence of marital rape, explaining that non-consensual sexual activity in a marriage damages confidence and trust. Thus, it can be concluded that the courts in these two case studies do not hold the opinion that making marital rape illegal will undermine the institution of marriage.

### 3. Not common in India

Proponents of keeping marital rape non-criminalized argue that since it is uncommon in India, there is no need to enact laws against it.

Four more points of view can be used to clarify the claim that marital rape is rare in India.

Firstoff, according to a 2011 study conducted by the International Centre for Research

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<sup>4</sup> Supra Note 1.

<sup>5</sup> Supra Note 2.

<sup>6</sup> L. Balazsi, *Marital Rape in India: The Subject of a Private Matter Within the Four Walls of a Marital Home*, 2021.

on Women, one in five Indian men who participated in the poll acknowledged pressuring their spouse to engage in sexual activity. It's interesting to note that 57% of the Indian males asked in the same study indicated that men require sex more than women do. Furthermore, according to 58% of the Indian males surveyed, guys do not talk about sex. Consequently, it may be concluded from this that men's perspectives on sex naturally dominate. Second, according to a 2014 poll conducted by the International Centre for Research on Women, approximately 33% of Indian males asked admitted to having exposed their wives to abuse of any kind, with 16% of those respondents saying this included sexual violence. Thirdly, in 2014, the Committee on the Elimination of Discrimination Against Women (CEDAW) presented its Concluding observations of India.<sup>7</sup> The CEDAW Committee expressed concern about violent crimes against women, particularly rape cases, which have increased by 902.1 percent since 1971, according to the National Crime Records Bureau, and the continued impunity for these acts. The CEDAW Committee expressed particular concerns on the continuation of the exception for marital rape. Fourth, according to 83% of Indian women surveyed in the 2015–16 Ministry of Health and Family Welfare's National Family Health Survey (NFHS–4), their present husbands have sexually abused them. Six percent of the Indian women surveyed reported that they had experienced physical coercion to engage in sexual activity against their will from their husbands. This was the most common form of sexual violence. In addition, 4% of the Indian women surveyed claimed that their husband coerced them into having sex without their consent by using threats or other means. Furthermore, three percent of the Indian women surveyed claimed that their husbands had coerced them into engaging in further sexual actions against their will. Given these viewpoints, it is therefore reasonable to wonder how those who want keeping marital rape legal could possibly claim that such crimes are uncommon in India.

#### 4. Misuse of the Law

Advocates for the continuation of the law's non-criminalization of marital rape contend that its repeal would allow a woman to take advantage of the situation and use it as an excuse to accuse her husband of rape in order to settle unrelated disputes. The claim that women abuse the legal system has been applied against a number of legislations designed to shield Indian women from domestic abuse, including Section 498A of the IPC and the

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<sup>7</sup> Supra Note 1.

PWDVA, which makes it illegal for a husband or his family to intentionally inflict mental or bodily harm on their spouse. In the *Arnesh Kumar v. State of Bihar* case, for instance, the Supreme Court ruled that, rather than being a shield, Section 498A IPC is instead employed as a weapon by angry spouses. Nonetheless, a trend is apparent, namely that the advocates of this line of reasoning have been unable to verify their statements with empirical evidence on a consistent basis.

The claim that laws enacted to protect women are abused by them wanes when statistics are presented, such as the fact that just 14% of cases under Section 498A IPC in 2012 resulted in convictions.<sup>8</sup> It is noteworthy to emphasise that poor conviction rates are frequently associated with improperly carried out investigations, with testimonies being withheld, and with improperly gathered evidence. The idea that women exploit the legal system ignores the fact that stigma, accessibility issues, and a lack of resources make it difficult for women to even obtain justice under the law. In addition to being drawn out and challenging, the legal process for a woman to initiate a complaint against her husband is also embarrassing and frequently involves seeking remedies that are hard to obtain. When a woman files a police report, she frequently encounters insensitive and invasive situations, and court rulings demonstrate the animosity against a woman who files a claim against her spouse. A woman is frequently asked to drop her complaint after filing a case with the police. It might also be said that there is probably a distinction between calling the police and reporting to them what your husband exposes you to at home as a woman vs taking part in a study. A woman may be brave enough to share her story in a study, where she may encounter resistance from others who would otherwise tell her what to believe and feel. However, as one example shows, a woman's trustworthiness appears to be called into question when she files a police complaint against her spouse.

The claim that poverty, illiteracy, and a lack of education allow women to abuse the legal system is in conflict with the punishment of marital rape. The main point of this is that women are not necessarily equipped to abuse the law if they are not well-educated or do not have access to all the resources necessary to use it against them. Given the numerous obstacles a woman must overcome in order to file a police complaint against her husband, it is very uncommon for a married woman to be able to influence the Indian

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<sup>8</sup> D.R. Kumar Yadav & M. Dalal, *Marital Rape in India: A Critical Study*, SSRN 3847118, 2021

judicial system in her favour.

## **THE MARITAL RAPE EXCEPTION THROUGH NATIONAL LEGISLATION GLASSES**

### **A. The Indian Penal Code, The Hindu Marriage Act and the Protection of Women from Domestic Violence Act**

Supporters of keeping marital rape non-criminalized contend that other national legal frameworks address the legal hazard brought about by the marital rape exception. These include, for instance, the Hindu Marriage Act (HMA), the PWDVA, and Sections 376B and 498A of the IPC. If a husband subjects his wife to rape when they are in a legal separation, it is punishable under Section 376B IPC; if a husband or one of his relatives subjects the wife to cruelty, it is punishable under Section 498A IPC. Section 13 HMA states that "cruelty" is a legitimate justification for divorce.<sup>9</sup> The PWDVA's definition of domestic violence acknowledges that sexual abuse falls under its purview. The PWDVA provides victims of sexual domestic violence with civil remedies, including protection orders and monetary compensation.

To refute the logic presented here, the PWDVA only covers civil remedies, however it protects women who have experienced sexual abuse in their marriages. It is pertinent to note that Section 122 of the Indian Evidence Act (IEA) stipulates that information concerning one spouse may only be shared with the other during a marriage if one of them is accused of a crime against the other. Given that the PWDVA only provides civil remedies for married women who are sexually abused by their husbands, disclosing the spouse's information can be crucial to the exposed women's ability to obtain the right remedies. However, this "possible" chance is denied because Section 122 of the IEA forbids doing so. Although the PWDVA and the HMA give vulnerable married women the opportunity to leave a violent and hazardous situation, none of the laws have any provisions to stop men from engaging in these violent behaviours. When a marriage is dissolved due to cruelty, the man has the chance to marry another woman and subject her to the same violent deeds, sending her to the same destiny as the lady who managed to flee. This suggests that a man's ability to subject his new bride to marital rape in his subsequent marriage is unrestricted.

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<sup>9</sup> Supra Note 1.

### **B. The Indian Penal Code and the Protection of Human Rights Act**

It's interesting to note that, technically speaking, there is no need to consider the full range of Indian national laws because, with regard to the marital rape exception, which keeps a husband accountable for "less" serious crimes against his wife, it is already contradictory and inconsistent in the IPC. According to the IPC, a husband may be held accountable for offences like sexual harassment and the penalties associated with it, assault or use of force against a woman with the intent to undress, stalking, voyeurism, assault of a woman with the intent to violate her modesty, punishment for intentionally causing grievous harm, and intentionally causing harm with dangerous weapons or means. Claiming that marital rape cannot be recognised as a crime in India is illogical since all these highlighted crimes are deemed criminal both inside and outside of marriage relationships. Moreover, it is inconsistent with the PHRA to keep the marital rape exemption in the IPC. According to the PHRA, the Constitution protects human rights such as the right to equality, liberty, and life. The Supreme Court ruled in *Independent Thought v. Union of India*<sup>10</sup> that a husband who forces his child-wife to have sex against her will or without her consent violates her human right to liberty or her dignity under the PHRA, which is protected by the Constitution. It is important to emphasize, nevertheless, that the PHRA seeks to protect everyone, not just child house wives. It follows that it seems sensible to claim that the legislation likewise intends to safeguard married women who are considered "adults." A similar argument can be made with the PWDVA.<sup>11</sup> It is incompatible with the rights that are safeguarded by this national legal document to maintain the marital rape exemption, even if it is evident that it causes bodily and emotional harm to women.

### **C. The Constitution**

Married women are unable to exercise their constitutionally guaranteed human rights because of the exception for marital rape. More precisely, it pertains to a violation of, among other things: Article 21, which protects the right to life and personal liberty; Article 15, which forbids discrimination based solely on sex; and Article 14, which is an equal protection provision that ensures equality before and of the law.

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<sup>10</sup> Supra Note 2.

<sup>11</sup> Supra Note 1

## FINDINGS

Since the IPC 1860 was established, rape laws have changed; this thesis clarified three of those changes. All three of them have in common that their establishment has been impacted by three rulings rendered by Indian courts. Namely the cases:

### 1. **Tukharam vs State of Maharashtra**

After the Indian Supreme Court's ruling in the Thukaram v. State of Maharashtra (Mathura case), social protests were held, and the Criminal Law (Amendment) Act 1983 (Amendment Act 1983) was passed as a result of the social pressure for modifications to the country's rape laws.<sup>12</sup> The Amendment Act of 1983 served as the tipping point for the amendment of Sections 375 and 376 IPC, the latter of which specifies the penalty for rape. Thus, the waves of change in rape legislation began with this Amendment.

A modification brought about by the Amendment Act of 1983 is that rape and sexual relations committed by officials while they are on duty are now deemed to be severe forms of rape and a minimum penalty was instituted.<sup>13</sup> Because the prosecution's and victim's evidence was rejected in the Mathura case, Section 114A of the Indian Evidence Act, 1872 (IEA) was established, shifting the burden of proof to the accused. A law pertaining to marital rape that was included in the Amendment Act of 1983 states that it is unlawful for a man to coerce his spouse into engaging in sexual activity when the couple lives apart as a result of tradition or court order. In this context, it should be noted that forced sexual relations—also known as marital rape—that do not result from a court order separating the parties are not considered crimes. Thus, even though India decided not to recognise marital rape as a criminal offence, the Amendment Act of 1983 allowed for a wave of expansion and enhanced protection for women who had been raped.

### 2. **State Through Reference vs Ram Singh & Ors.**

The Delhi gangrape case, State Through Reference vs. Ram Singh & Ors., sparked a public outcry that eventually prompted changes to Indian rape laws, culminating in the Criminal Law (Amendment) Act 2013 (Amendment Act 2013).

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<sup>12</sup> Supra Note 6.

<sup>13</sup> Supra Note 6.

The atrocity against the girl in the case sparked nationwide demonstrations and the formation of the Verma Committee (Verma Committee) in honour of the late J.S. Verma, the former chief justice of India. The Verma Committee was tasked with proposing amendments and improvements to the legislation pertaining to rape and sexual violence. Eliminating the exception for marital rape was one of the Verma Committee's recommendations. The recommendation is based on the idea that a spouse should not be immune from rape because of his marital status; hence, the victim's relationship with the offender is irrelevant.

The 2013 Amendment Act brought about a number of modifications to Indian rape legislation. The definition of rape under Section 375 IPC has been expanded to include any type of penetration into a woman's or girl's bodily parts. Rape used to only refer to a man's penis being penetrated through the vagina. The inability of the woman to provide her consent is also a reason for rape, according to the seventh addendum. It can be said that despite the Amendment Act 2013 bringing about modifications to the IPC, the Verma Committee's suggestion to eliminate the marital rape provision was not followed. Therefore, unless there is a formal separation or the woman is under 15, a male cannot be penalised for rape committed within the marriage.

### **3. Independent Thought vs Union of India**

The Criminal Law (Amendment) Act 2018<sup>14</sup> is the most recent wave of changes to the Indian rape laws. The Supreme Court's 2017 ruling in *Independent Thought v. Union of India*<sup>15</sup> was a key element in this shift.

A non-governmental organisation called Independent Thought filed a lawsuit in the public interest to defend child wives against rape in marriage. This is because the marital rape exception only shields wives who are raped by their husbands and are under the age of fifteen. Two judges in this case, Madan B. Lokur and Deepak Gupta, reasoned that child-wives between the ages of 15 and 17 should not be covered under the marital rape exception. The exception, according to the Supreme Court, makes a distinction between married and single girls, which the court intended to be both arbitrary and

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<sup>14</sup> Criminal Law (Amendment) Act, 2018

<sup>15</sup> Supra Note 2.

discriminatory. In light of this, the Supreme Court supported its decision to raise the age restriction for the marital rape exception from 15 to 18 years old in this ruling. In this case, the Supreme Court ruled that making a distinction between an unmarried female and a married girl is incompatible with the Indian Constitution, particularly Articles 15(3) and 21. It was also mentioned that the right to equal protection under the law is guaranteed under Article 14 of the Constitution. In addition, the Supreme Court notes that a husband forcing his child-wife to engage in sexual activity is incompatible with the Constitution and the Protection of Human Rights Act, 1993 (PHRA)<sup>16</sup>, which both recognise dignity and liberty as guaranteed rights. The Supreme Court also stressed that a woman has the right to self-determination with regard to her own body. The Supreme Court went on to note that there are contradictions in the law, as married males can face charges for less serious sexual offences but not for heinous rape crimes. Less serious offences for which a male may face legal action include voyeurism, abuse or use of criminal force against a woman with the purpose of disrobing; intent to affront her modesty; and stalking. There are no exclusions for these less serious crimes, regardless of whether they take place during a marriage or not. Contrary to rape, which is seen as a more serious sexual offence despite the existence of the marital rape exception. Section 3 of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) also provides protection for women who are victims of less serious crimes. Ultimately, when seen from a global standpoint, the Supreme Court made it clear that India is bound by laws, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>17</sup>.

Thus, it can be said that Section 376 IPC, for instance, had modifications as a result of the Amendment Act 2018. The marital rape exception, however, has remained unchanged despite the Supreme Court's comment that rape is a sexual offence of a more serious kind and that the exception creates a discriminatory distinction between married and unmarried girl children. This indicates that India has decided to keep the exception in the law without making any changes. The case of *Independent Thought v. Union of India*<sup>18</sup> is regarded as a seminal ruling, demonstrating the Supreme Court's desire to

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<sup>16</sup> Protection of Human Rights Act, 1993.

<sup>17</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

<sup>18</sup> *Supra* Note 2.

safeguard married female children between the ages of 15 and 17 from marital rape, as demonstrated in the paragraph above. One concern that might arise is if this would force the judicial system to consider whether married women of all ages can be shielded from marital rape.

## **SUGGESTIONS AND RECOMMENDATIONS**

Married women's human rights in cases of marital rape require a multipronged strategy that includes social, legal, and cultural reforms. The following are some ideas and advice to think about:

1. **Legal Reform and Enforcement-** Encourage legislative changes that would make marital rape a crime and close legal gaps that shield spouses from prosecution for rape in many states. Provide sensitive and unbiased training to judges, law enforcement officers, and legal professionals to guarantee the successful implementation of legislation that criminalise marital rape.
2. **Awareness and Education-** Organise extensive education campaigns with the goals of dispelling myths, changing public perceptions of marital rape, and confronting attitudes that support or ignore this type of abuse. Incorporate comprehensive sex education programs that prioritise consent, respect, and limits in intimate relationships in schools and communities.
3. **Empowerment and Advocacy-** Educate women on their rights in marriage by informing them of their legal safeguards, available resources for assistance, and channels for pursuing legal action in the event of marital rape. By supporting and elevating the voices of survivors via advocacy initiatives, we may encourage movements and platforms led by survivors to share their stories and call for change.
4. **Intersectional Approaches-** Acknowledge and confront the intersectional character of marital rape by taking into account the ways in which experiences of marital rape are influenced by racial/ethnic background, socioeconomic level, sexual orientation, and disability. Create solutions that address the particular requirements of disadvantaged populations.
5. **Engagement of Stakeholders-** Work together with local and religious authorities to dispel harmful customs and beliefs that support marital rape and advance gender equality and respect in partnerships. Engage governmental and non-governmental organisations in the creation and execution of policies and initiatives targeted at successfully preventing

and treating marital rape.

A comprehensive and coordinated strategy including legislative changes, social transformation, support services, and empowerment programs is needed to address marital rape within the context of human rights. These components are meant to foster a culture of equality, respect, and dignity in married partnerships.

## **CONCLUSION**

It is clear that India wants to protect and advance women's rights by passing national legislation and joining international human rights treaties (both general and particular). However, because of the marital rape exception, there is a legal loophole concerning married women's rights within marriages. The notion that a husband owns a woman's libido stems from patriarchal social standards, which are the foundation of the marital rape exception. This is because a woman implicitly consents to sexual relations with her spouse when they tie the knot.

The Indian state wishes to protect and keep apart the marriage institution from outside influence, which is why the exception for marital rape has been kept in place. By reading ministerial remarks, for instance, presents a firm opinion that rape cannot occur within a marriage and, even if it did, legislation would be unfeasible because of issues like poverty, illiteracy, and the possibility of married women abusing the legal system. The Indian legal system requires hierarchical communication in order to change something as deeply ingrained as marital rape. This involves government representatives taking a stand and legislators being willing to consider alternative viewpoints, such as classifying marital rape as a crime. The married woman is deprived of the opportunity to experience the same human rights as the single woman since marriage is viewed as an institution that is superior to her human rights. It is artificial to classify women according to their marital status, and this cannot be used to determine whether or not rape should be considered a crime. Regardless of a woman's marital status, rape laws should be in place to define the offense, provide the appropriate punishment, and safeguard her rights.

One cannot help but wonder why an Indian marriage is so different from other marriages around the world that it can be justifiable to declare the marriage to be in a lawless area by giving a man legal immunity when he rapes his wife. Since neither the IPC, the HMA, nor the PWDVA allows a raped married woman to file a police complaint accusing her husband of rape, the logic that a

married woman has access to other laws to seek justice when she is subjected to rape by her husband can be questioned. Since marital rape is not considered a crime, the victim of the crime may choose to pursue a civil law remedy or demonstrate that she has been the victim of another, less serious sexual crime. Additionally, the lady finds herself at a dead end because Section 122 IEA forbids her from releasing information as long as her spouse is not accused of a crime against her. In addition, since spouses can be prosecuted for less serious sexual offences, keeping the exemption for marital rape is illogical and conflicting with the IPC itself. It is likewise unclear how the legislator can continue to argue that the spousal rape exception is unrouteable in light of its clear conflicts with the UDHR, ICCPR, PHRA, CEDAW, Constitution, and ICESCR, among other illustrative articles. The purpose of legislation is to protect people's rights; but, as the conventional patriarchal perception of a married woman within marriage takes precedence, as a married woman, you do not have the right to enjoy fundamental human rights when you are raped by your husband.

Despite the legislature's unwillingness to acknowledge it as a crime, marital rape is clearly an issue in India. The case of *Nimeshbhai Bharatbhai Desai v. State of Gujarat* provides support for this issue since the High Court noted that a sizable portion of married women are burdened by the non-criminalization of marital rape. Thus, the unwillingness to make marital rape a crime seems to be a political problem rooted in a patriarchal viewpoint that sees the woman as the husband's subordinate partner in the marriage. The conservative facets of society are adamant that the marital rape exception cannot be eliminated, despite waves of modifications to the law, examples of violent rape cases, and the Verma Committee's suggestion to do away with it.

In conclusion, it can be said that India must take legal action in order to acknowledge that married women are entitled to the entirety of their human rights. However, since India, as an example, has the legal capacity to demand change, this is not an insurmountable task. As the issue is clearly multifaceted, it is impossible to fully assess what India needs to do to address it at this time. However, eliminating the exception for marital rape and making it a crime would be a significant first step.

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