

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## **Mrs.S.Kalpana**

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **"BREAKING THE CHAINS OF SILENCE: THE BATTLE AGAINST MARITAL RAPE"**

AUTHORED BY- SANSKAR PATIDAR & ADARSH SHARMA

Programme- BBALLB

“Under the Guidance of Professor Surbhi Meshram”

Symbiosis Law School, Hyderabad

## **ABSTRACT**

**“Truth: Rape does indeed happen between girlfriend and boyfriend, husband and wife. Men who force their girlfriends or wives into having sex are committing rape, period. The laws are blurry, and in some countries, marital rape is legal. But it still is rape”<sup>1</sup>**

Marital Rape is a type of sexual violence that happens inside close connections and frequently includes power, danger, or terrorising to get sex without the accomplice's assent. Marital rape is not considered a crime in India, and women do not have any legal recourse against it. The Indian Penal Code's exception for marital rape has been criticised for denying women autonomy over their bodies. Support for victims, legal reform to criminalise this heinous act, and increased awareness and education are all required. There is a need for greater awareness and education regarding marital rape, including its harmful physical and emotional effects on the victim. Marital rape is a violent act that harms individuals and society as a whole. To ensure that marital rape is treated as a serious crime and that those who commit it are held accountable, legal reforms are required.

This research offers a thorough analysis of marital rape. Following a brief definition of marital rape and a summary of key data on its prevalence, the issue's legal and psychological dimensions and any relevant exceptions are discussed. Following a brief legal overview of marital rape from both an Indian and worldwide viewpoint, the victim's legal rights and remedies are discussed. In the end, suggestions have been made to alter current rape laws and their associated consequences. Keywords- Marital rape, Sexual assault, Consent, Domestic violence, Public health threat, Long-term effects, Feminists, Physical coercion, Legal dimensions, Psychological dimensions

---

<sup>1</sup> Patti Feuereisen, Marital Rape Quotes (9 Quotes), 2005, <https://www.goodreads.com/quotes/tag/marital-rape>.

## HYPOTHESIS

Marital rape is a severe form of domestic viciousness with significant physical, psychological, and emotional impacts on victims. Legal reform and greater awareness are necessary to address this issue effectively.

## INTRODUCTION

Non-consensual sexual contact in which the husband uses force or violence is considered marital rape. It is serious and requires the utilisation of actual power to be viewed as an offence. The demonstration hurts the person in question, and a lawful move should be made against the culprits. Victims need help recovering from the trauma and finding resources to prevent marital rape in the future. It is essential to educate society and raise awareness of this crime.

These non-consensual sexual activities include anal and oral sex as well as constrained sexual way of behaving with others and other sexual demonstrations that the casualty views as humiliating, unwanted, agonising, and horrible. "Exception two to Section 375 of the IPC decriminalises marital rape and holds that sexual intercourse by a man with his own wife, who is not under 18, without her consent is not rape"<sup>2</sup>. As a result, marital rape is granted legal immunity.

In "**Independent Thought v. Union of India**"<sup>3</sup>, the Supreme Court of India struck down the exception that allowed sexual intercourse with a wife who is above 15 years of age. The Court held that the exception was unconstitutional and violated the rights of women and children, perpetuating child marriage, sexual abuse, and exploitation. The court further held that any sexual activity between a husband and his wife when she is under the age of 18 constitutes rape, thereby providing protection to women between the ages of 15 and 18. The judgment has brought about significant changes in the social mindset and has helped in protecting the rights of women and children in India.

The question that now emerges is: Does the marriage contract grant the husband the right to engage

---

<sup>2</sup> S. Subramaniam, "Supreme Court to Hear Petitions Relating to Criminalisation of Marital Rape from March 14 - The Hindu," The hindu bureau, 2023, <https://www.thehindu.com/news/national/supreme-court-to-hear-petitions-relating-to-criminalisation-of-marital-rape-from-march-14/article66382195.ece>.

<sup>3</sup> Ketan Tewari and Mansi Bisht, "Marital Rape: License to Rape or Not? - International Journal of Law Management & Humanities," Hein online, 2018, <https://www.ijlmh.com/paper/marital-rape-license-to-rape-or-not/>.

in sexual activity with her too forcibly and against her will?

But once more, the criminalisation of such offenders is left out of the legislation and is a controversial topic across India. There had never been a particular clause in Indian law that would have protected married women's dignity, taking their worth into account. Although the idea of "Implied consent" in a marriage has been the subject of several inquiries under various rulings. In addressing the criminalisation of marital rape, **the High Court of Gujrat stated that:**

**“The total statutory abolition of the marital rape exemption is the first necessary step in teaching societies that dehumanised treatment of women will not be tolerated and that the marital rape is not a husband’s privilege, but rather a violent act and an injustice that must be criminalised.”<sup>4</sup>**

As a result, neither our Indian parliament nor the judiciary has taken any firm step to make the idea of marital rape illegal in India to date, but the nation still holds out hope that it will be because of ongoing legal cases in the high courts.

## LITERATURE REVIEW

Marital rape refers to any non-consensual sexual activity, including sexual contact or other methods of sexual penetration, that is committed by one spouse against the other spouse without the latter's consent. It is a form of sexual violence and domestic abuse that occurs within the context of marriage or intimate partner relationships.

### Historical Framework

At the start of the 18th century, there was no specific provision against marital rape in the British common law. A male can now have sexual intercourse with his partner with or without her assent, despite the widespread belief that it was against the law for a husband to engage in coercive sex with women other than his wife in the past. As a result, it was decided that the marital contract protected the husband's right to have physical contact with his wife. Subsequently, the marriage contract is as yet a consent to take part in or have intercourse.

In his History of pleas for the Crown, Sir Mathew Hale stated that

**“But the husband cannot be treated as guilty of rape which is committed by him only upon his legal wife, as per their mutual matrimonial consensus and contract wherein the wife has**

---

<sup>4</sup> Ketan Tewari and Mansi Bisht.

**given up herself in this kind unto her husband, which she cannot retract”<sup>5</sup>**

Later, the older code made this its preferred option. A new Code was then enacted by the British government, and it is still in effect in unconventional India. The IPC of 1860 is also thought to be the fundamental code for punishing criminals. Numerous different nations adhered to similar guidelines or were less rigid about arraigning such conjugal assault culprits, rather than India, whose strategy has not been modified in its 73 years of autonomy. 50 of these nations eventually changed their laws to make marital rape a felony, including Australia, New Zealand, Canada, Thailand, and others.

The legal status of marital rape in different countries

**England:**

1. Before 1992, marital rape was not considered a crime.
2. The R v. R case in 1991 raised the question of whether a man could rape his wife.
3. The husband was found guilty and given a prison term after the court decided that marital rape was still covered by common law.
4. Life in prison is the maximum penalty for marital rape.

**Australia:**

1. Many states in Australia made changes and looked at laws about rape and other sexual offenses in the 1970s.
2. The Mitchell Committee was established in 1975 and made changes to the law regarding rape and other sexual offenses.
3. In 1976, regulation was acquainted with eliminate the exclusion for spouses not being arraigned for assaulting their wives.
4. The right to consent to sexual activity, whether within or outside of marriage, must be granted to every adult.
5. Conjugal assault is presently condemned in all wards of Australia.
6. Depending on the severity of the offense, marital rape can result in up to 15-20 years in prison.

---

<sup>5</sup> Ketan Tewari and Mansi Bisht.

**USA:**

1. Before the 1970s, conjugal assault was absolved from assault regulations in various states.
2. Chief Justice Matthew Hale, claiming irrevocable consent, established an exception for marital rape in the seventeenth century.
3. In 1857, Massachusetts perceived conjugal assault as a special case for assault, and arraigning spouses for the vicious crime was troublesome.
4. The 1970s women's movement changed the law to make marital rape a crime.
5. The first state to criminalise marital rape was Nebraska in 1976.
6. Depending on the severity of the offence, marital rape can result in up to life in prison.

**Indian View Point:**

Marital Rape is the point at which a life partner is constrained into sexual relations without her assent, which is a debasing and shameful method for lessening ladies' worth in the public eye. In India, domestic violence has been a problem for a long time and has been getting worse in recent years. According to the National Crime Records Bureau of India, a woman is sex assaulted every 16 minutes and abused by her in-laws every 14 minutes. Due to societal taboos or apathy on the part of law enforcement, marital rape may go unreported or unnoticed in the home. This makes it challenging to address and forestall such occurrences. Rape is defined under "Provision 375 of the Indian Penal Code, although exception 2 of this Section 375 of the Indian Penal Code (IPC) deals with the offense of rape. Exception II of Section 375 of IPC decriminalises rape by a husband on his wife"<sup>6</sup>. It states that-

**“sexual activity between a man and his wife, provided that the wife is beyond the age of fifteen, is not rape”.**

Consequently, this crime is not a crime in India.<sup>7</sup> Even if there have been many changes to the penal code and other sexual assault-related regulations in recent years, marital rape is still legal, which is still useful to society. The above crime is still not regarded as an offence in India despite being made a felony in several important democracies throughout the world. This section goes much further in violating the fundamental right guaranteed by "Article 21 of the Indian Constitution[No person shall be deprived of his life or personal liberty except according to

---

<sup>6</sup> Ishita Chandra, "WHY EXCEPTION II OF SECTION 375 OF THE INDIAN PENAL CODE NEEDS TO BE DECLARED UNCONSTITUTIONAL," Manupatra, 2022, <https://articles.manupatra.com/article-details/WHY-EXCEPTION-II-OF-SECTION-375-OF-THE-INDIAN-PENAL-CODE-NEEDS-TO-BE-DECLARED-UNCONSTITUTIONAL>.

<sup>7</sup> Ketan Tewari and Mansi Bisht, "Marital Rape: License to Rape or Not? - International Journal of Law Management & Humanities."

procedure established by law]”<sup>8</sup>. The privileges to individual freedom, security, poise, and substantial respectability ensured by Article 21 were linked by the Apex Court to the freedom to decide and provide consent for sexual actions.

In a nation where literacy rates are low, women often marry without being fully aware of their sexuality. Additionally, any attempt by the spouse to get close to the woman might be interpreted as rape because it would be done without her agreement.

In the case of **D.K Basu vs. State of West Bengal**<sup>9</sup>, it was held that Article 21 protects people from all forms of torture and other cruel, inhumane, or humiliating treatment. The Court further ruled that a prisoner does not lose his right to life and dignity while serving a prison sentence. Similarly, married women's freedom to choose whether to engage or refrain from having sexual relations with their husbands cannot be separated from a prisoner's legal rights. Married women do not shed their right to consent and be free from rape just by being married. As per Maneka Gandhi, **“it is considered that the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors like level of education, illiteracy, poverty, myriad social customs and values, religious beliefs, the mindset of the society to treat the marriage as a sacrament etc”.** Closing conjugal assault regulation can't be applied in India. As a result, responses like these make it harder to criminalize crimes like marital rape.<sup>10</sup>

Violence against women is defined as-**“any act of gender-based violence that results in, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”** in the United Nations Declaration on the Elimination of Violence Against Women.<sup>11</sup>

According to a 2013 recommendation from the UN Committee on the Elimination of All Forms of Discrimination Against Women, the Indian government ought to make marital rape a criminal offense. An NGO named Independent Thought filed a PIL in 2017 arguing that married women

---

<sup>8</sup> Ministry of Law and Justice, “The Constitution of India [As on 1st April, 2019],” 2019, 1–281.

<sup>9</sup> Ishita Chandra, “WHY EXCEPTION II OF SECTION 375 OF THE INDIAN PENAL CODE NEEDS TO BE DECLARED UNCONSTITUTIONAL,” Manupatra, 2022, <https://articles.manupatra.com/article-details/WHY-EXCEPTION-II-OF-SECTION-375-OF-THE-INDIAN-PENAL-CODE-NEEDS-TO-BE-DECLARED-UNCONSTITUTIONAL>.

<sup>10</sup> Ketan Tewari and Mansi Bisht, “Marital Rape: License to Rape or Not? - International Journal of Law Management & Humanities.”

<sup>11</sup> Ketan Tewari and Mansi Bisht.

beyond the age of 15 should also have protection. Conclusion: Even though India is progressing in every area of global development, the rules that control Indian citizens need to be updated. Being regulated by a law that was passed in 1860 is also dubious and needs to be updated throughout time.

## CONCLUSION

**“If all men are born free, how is it that all women are born slaves?<sup>12</sup>”**

A marriage should not be seen as permission for a husband to force his wife into a sexual relationship that can be punished. After marriage, a lady can't be seen as the property of men; all things being equal, she has similar opportunities and privileges to administer her body as an unmarried lady. Regardless of who the perpetrator is or how old the victim is, rape is still rape, whether it takes place before or after marriage. Then again, how could a lady who is assaulted by her companion be considered just and satisfactory in the event that she is assaulted by any other person other than her better half? Sexual assault committed during marriage and domestic violence ought to be dealt with in different ways and by different sets of laws. All other forms of sexual assault are less serious than marital rape. The difficulty with failing to report such an incident is that it prevents the general public from being aware that it is against the law to have sex with a married person without their consent.

---

<sup>12</sup> Indira Sharma, “Violence against Women: Where Are the Solutions?,” *Indian Journal of Psychiatry* 57, no. 2 (April 1, 2015): 131, <https://doi.org/10.4103/0019-5545.158133>.