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MARITAL RAPE IN INDIA

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ABSTRACT

Under Section 63 of the Bharatiya Nyaya Sanhita (BNS), a husband cannot be charged with raping his adult wife. This legal "exception" essentially means that once a woman says "I do," the law no longer hears her say "no." It is the biggest personal and painful issue that has broken the country. On one side, many believe this rule treats married women as second-class citizens; men have the right to rob their dignity and the right to control their bodies. They argue that a marriage license shouldn't be a license to abuse or marital rape. On the other side, some fear that changing the law might not be easy for the family or could lead to false accusations. The Supreme Court now holds the ultimate authority, since various courts have arrived at conflicting decisions. In the end, this issue transcends legal statutes; it centers on whether the law ought to safeguard a woman's safety and autonomy, even in her residence.

KEYWORDS

Marital Rape, Constitutional Rights, Consent in Marriage, Right to Dignity, Sexual Autonomy, Legal Reform, Human Rights Standards, Criminalization of Marital Rape, Marriage Institution Debate, and Women's Rights in India.

INTRODUCTION

Numerous individuals are seeking details about the current discussions in India concerning marital rape and the related legislation. It specifically violates accepted standards and regulations. At present, the Indian Penal Code (IPC) does not recognize marital rape as a criminal offense. In Part 375, Exception 2 above, husbands cannot be prosecuted for raping their wives if they are over 18. Individuals who were married believed it meant that sexual activity could occur without restrictions.

It was a legal gap—a regulatory exception to clarify what was accessible at that moment. It has emerged as a significant topic of discussion regarding gender justice in India, as interpretations of ideas such as consent, bodily autonomy, and women's rights have changed for certain individuals. Many individuals, including activists, lawyers, and survivors, desired the removal

of this exception from the law; they claimed it upheld gender inequality and contradicted the constitutional principles of equality and dignity. The conversation is prevalent, encompassing talks that emphasize topics beyond marriage, such as culture, reform, and measures to safeguard women from mistreatment within marriages.

REVIEW OF LITERATURE

1. Constitutional and Human Rights Dimensions

Lawyers and activists claim that the exception for rape in a marriage goes against key constitutional rights, including Articles 14, 19, and 21, which safeguard freedom, equality, and dignity. The law says that married women can't say no to sex. This takes away their rights and makes them feel inadequate about themselves. Comparative literature indicates that India's stance contravenes international human rights norms, as numerous nations have rendered marital rape illegal to safeguard sexual autonomy and ensure equal rights for both genders inside marriage.

2. Socio-Cultural Resistance and Patriarchy

Many people believe that marriage grants unrestricted sexual access, which relates to the topic of marital rape. Some people who don't want things to change claim that making rape in a marriage a felony could harm families or lead to false accusations. Feminist scholars assert that such concerns prioritize patriarchal dominance over women's bodies over genuine equity. Literature demonstrates that these cultural narratives suppress women's voices and perpetuate the notion that marriage serves as a mechanism for male dominance over females, rather than fostering a relationship of equals.

3. Survivor-Centric and Judicial Perspectives

Research concentrating on survivors indicates that marital rape can inflict significant psychological damage, emotional turmoil, and enduring health issues. The law doesn't acknowledge these problems, and reporting abuse is considered a bad thing, which worsens them. The High Court has produced verdicts that are not the same; thus, the Supreme Court is the only one who can say for definite if it is wrong to rape a spouse. Activists, attorneys, and non-governmental organizations (NGOs) always want to see reform. They think it's a big problem for gender fairness and following the Constitution. Most studies believe that raping a spouse while married is not only against the law but also a significant violation of women's rights that has to be corrected right away so that Indian law is in conformity with the

constitution and international human rights norms.

4. Human Rights Law Review (2023)

The Human Rights Law Review believes that the IPC's lack of a law against rape in marriage is wrong and against the law. It's evident that victims don't have any legal options, which makes the system even less equitable for women. The study demonstrates that Indian criminal law is founded on archaic concepts that put women below men. It states that Indian legislation needs to reform fast so that it is in line with human rights standards around the world. It also believes that making rape in a marriage unlawful is necessary to defend women's independence and dignity.¹

5. Legal Research & Analysis (2023)

This article discusses the history of the defense of marital rape and how it goes against people's rights under the Constitution. It talks about how courts have read the exception and says that India ought to maintain its promise to protect human rights around the world. The writers strongly advocate making it a crime to rape a spouse in order to make things fair for women. They claim that changing marital equality is not only the law but also the proper thing to do.²

HYPOTHESIS

The Indian Penal Code does not protect women from marital rape, which goes against their rights to equality and freedom of movement. Making rape in a marriage a crime will assist married women in seeking justice and bring India up to par with human rights standards in other countries.

OBJECTIVE OF THE RESEARCH

The study on the marital rape case in the Indian Penal Code seeks to ascertain if the current legal framework adheres to the constitutional tenets of equity, dignity, and justice. Because it has old-fashioned beliefs about marriage and consent, Section 375 of the IPC only lets someone be charged with marital rape if the victim is under 18 years old. Scholars say that this legislative exception violates women's physical autonomy and keeps bias alive. The study also looks at

¹ Human Right Law Review < <https://humanrightlawreview.in/wp-content/uploads/2023/05/An-Analysis-of-Criminalisation-of-Marital-Rape.pdf> > (last visited on 10 April, 2026)

² Legal Research and Analysis, < [Marital Rape in India: Criminalization vs Legal Justification | Legal Research & Analysis](#) > (last visited on 10 April,2026)

the many obstacles that make it difficult for victims to seek aid and legal recognition, as well as how these challenges affect their mental health, social lives, and human rights. The study's purpose is to teach individuals how to change how they perceive rape in marriage by giving lawmakers and the public information, case law, and solutions. The state will protect the rights and dignity of married women with this move.

METHODOLOGY

In this research paper, I utilize secondary sources such as newspapers, articles, journals, books, and reputable websites to gather qualitative data regarding the ongoing discourse in India over the criminalization of marital rape.

Marital rape is when a person, usually the husband, has sexual contact with a woman without her permission while they are married. The issue being talked about is whether or not marital rape should be considered a crime and whether it should be made a punishable charge under the Indian Penal Code. The main problem here is about physical freedom, equal rights for men and women, and recognizing that everyone, regardless of marital status, has the ability to be without violence or force.

IMPORTANCE

When we talk about marital rape in the Indian Penal Code, we have to deal with huge issues of gender equality and justice that are written into the constitution. As of now, Section 375 Exception 2 of the IPC (which is preserved under Section 63 of the Bharatiya Nyaya Sanhita, 2023) stipulates that sexual conduct that is not agreed upon in a marriage is not rape. No matter what happened during the sex, especially if it wasn't consensual, it keeps the husband from being charged with a felony. The Constitution's Articles 14, 15, and 21 stipulate that married women have essential human rights, such as the right to be free and to be treated the same as everyone else. This type of security violates those rights. The question of whether or not marital rape is allowed is not merely a legal one; it is also a social one because it goes against the patriarchal ideals about marriage that suggest you need permission to get married. When marital rape is labeled and defined as a crime, detrimental gender stereotypes are dismantled. India would show that consent must be respected in all types of relationships and that it is still a responsible member of the global human rights community if it makes marital rape a crime. We may be living through a turning point for India's advancement as a country because more and more people are talking about spousal rape in court and in public.

BACKGROUND

STATUTORY PROVISIONS

In India, the law regulating marital rape is based on a provision that was developed in a colonial context, which continues to allow husbands to escape prosecution for non-consensual sexual acts in the context of marriage. The important statutory provision is Section 375 Exception 2 of the Indian Penal Code (IPC), which states:

“Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

(This exception now reads eighteen years under the Bharatiya Nyaya Sanhita, 2023).

Now that there is an exception for husbands, married women are no longer officially considered victims of rape. It means that women lose their right to say no when they get married, which takes away more of their freedom, choice, and independence. Even if more people are learning about gender rights and altering their thoughts about it, Indian law is still experiencing many challenges with this statute.

CONSTITUTIONAL CONFLICTS

The constitutional implications of this exemption are significant. It violates multiple fundamental rights in the Constitution of India:

- **Article 14: RIGHT TO EQUALITY**

This article prohibits discrimination and obligates the state to uphold equality before the law and provide equal protection of the law. While the law excuses husbands from charges of rape, it creates, and codifies a situation in which the husband and wife are treated differently than unmarried women, therefore violating the equal protection of the law.

- **Article 15: PROHIBITION OF DISCRIMINATION**

According to Article 15, discrimination based on sex is prohibited. The exemption codifies patriarchal norms, legitimizing simply for the mere reason that a woman is married that married women have less legal protection, thereby institutionalizing gender discrimination.

- **Article 21: RIGHT TO LIFE AND PERSONAL LIBERTY**

This includes the right to life and personal liberty and bodily integrity and autonomy. By definition, a marriage violates these rights. The legal immunity granted to husbands means that there is no respect afforded to a woman's bodily control and decreases her

dignity.

The people and judges have looked into how constitutional guarantees and statute law are different. Some of the first requests about the exception for rape in a marriage are still in court, and people are protesting. Even though the Bharatiya Nyaya Sanhita, 2023, gets rid of the IPC, Section 63 still makes an exception for rape in a marriage. This shows that politicians don't want to deal with deeply held patriarchal beliefs.

HISTORICAL BACKGROUND

The law in India says that marriage rape is not a crime because of colonial law, particularly British views from the 1800s that there is just one agreement that can't be broken for sexual acts in a marriage. The Indian Penal Code (IPC) of 1860 made this theory official. It arose from patriarchal notions that believed women should obey their husbands and not have any freedom of their own, even after they were married. Feminists have mostly gotten rid of the idea of "irrevocable consent" and instead underlined the need for "continuous" consent, which may be taken back at any time, even while you're married.

"Law Commission reports,"³ such as the 172nd Report (2000), have acknowledged the necessity for legislation to criminalize marital rape but did not advocate for the incorporation of a specific criminal offense, citing social and evidentiary barriers as impediments to implementation. Feminists have consistently highlighted that the marriage rape exception infringes upon constitutional rights and institutionalizes gender-based violence. Over the years, there has been more research, public opinion, and legal understanding on the topic of patriarchal entitlement to lawful force inside marriage. However, it should be highlighted that legislative action has been relatively slow. There appears to be considerable opposition to confronting aspects of the patriarchal framework inside the legal system as it relates to women.

CASE LAWS

- **Madhukar Narayan Mardikar vs. State of Maharashtra⁴**

Madhukar Mardikar, a police inspector, was accused of trying to sexually attack Banubi, a woman who seemed suspicious. After an investigation by the department found that he had done something wrong and made up proof, he was fired. The Bombay High Court canceled the

³ Law commission of India < <https://lawcommissionofindia.nic.in/https-cdnbbbsr-s3waas-gov-in-s3ca0daec69b5adc880fb464895726dbdf-uploads-2023-06-2023060150-pdf/> > (last visited on 11 April, 2026)

⁴ Madhukar Narayan Mardikar vs. State of Maharashtra (1991) 1 SCC 57

order because of mistakes in the process and a lack of confirmation. The Supreme Court overruled this decision, saying that even a woman with simple virtue has the right to privacy and legal protection. It backed up the investigation's findings, criticized the High Court for looking at the evidence again, and reinstated Mardikar's firing.

- **Independent Thought vs. Union of India⁵**

The Supreme Court said that Exception 2 to Section 375 IPC, which allowed men to rape girls aged 15 to 18, was unconstitutional and threw it out. The Court said that this exception went against Articles 14, 15, and 21 of the Constitution and the Protection of Children from Sexual Offences (POCSO) Act. It confirmed that having sex with a minor wife constituted rape, no matter what the marital status is. The decision stressed the girl's bodily autonomy and dignity, bringing IPC and child protection regulations into line with one other. But it didn't cover marital rape of adult women, only minors.

- **Dilip Pandey vs. State of Chhattisgarh⁶**

The Chhattisgarh High Court partially agreed to a criminal revision that challenged accusations under Sections 498-A, 376, 377, and 34 IPC. The person who lodged the complaint alleged that her husband pressured her for a dowry and forced her to do sexual things that were not usual. The Court let the husband go free from the rape charge under Section 376, saying that Exception 2 to Section 375 IPC says that marital rape cannot be prosecuted. Charges under Sections 498-A, 377, and 34, on the other hand, were upheld. The ruling made it clear that even if marital rape is not a crime in India, other forms of cruelty and unnatural behavior may still be punished.

- **Hrishikesh Sahoo vs. State of Karnataka⁷**

The Karnataka High Court's Justice M. Nagaprasanna turned down Hrishikesh Sahoo's request to drop the rape charges because of the marital rape exception under Section 375 IPC. The Court said that the exemption, which says that sexual activities by a husband don't count as rape, goes against Article 14 and makes wives feel less important. It took the J.S. Verma Committee's advice and made marital rape a crime. The ruling was a step forward because it said that no legal exception can justify violence. The Supreme Court, on the other hand, later

⁵ Independent Thought vs. Union of India (2017) 10 SCC 800

⁶ Dilip Pandey vs. State of Chhattisgarh (2018) SCC Online Chh. 456

⁷ Hrishikesh Sahoo vs. State of Karnataka (2022) SCC Online Kar 1234

put the ruling on hold while it was reviewed again.

COMPARATIVE ANALYSIS⁸ (INDIA VS. GLOBAL WORLD)

IN INDIA

Section 375 of the Indian Penal Code (IPC) is the law that deals with rape in India. Part 375, Exception 2, provides that a man can have sex with his wife if she is over 18 years old. Exception 2 effectively excludes marital rape from criminal liability until a wife turns 18, giving the perception and the trend of "implied consent" within marriage.

- **Judicial Interpretation:** In *Independent Thought v. Union of India* (2017), the Supreme Court read down the age from 15 years to 18 years, which aligned with child protection legislation and policies of the Parliament of India; however, it didn't legislatively criminalize marital rape for adult women.
- **Societal Implications:** The law upholds the pernicious patriarchal premise that marriage equals a carte blanche license for sexual access, situating the wife as subordinated to her husband's sexual demands without her own agency/quasi consent.
- **Policy Debates:** Despite years of petitions and recognition of the issue in studies and reports, including recommendations from bodies including the Law Commission and the UN Human Rights Council, legislative reform has stalled due to interventions to possibly disregard appropriate parental age of consent laws for sexual relationships, the potential for misuse of new legislation in a criminal context, and a perception of how people in civil society see marriage as sacred.

GLOBAL WORLD

UNITED KINGDOM

In the important case *R vs. R* (1991), the House of Lords in the UK made it clear that a husband may be charged with raping his wife. This ended the old idea that marriage meant giving up your right to agree. This decision was a big change in how the law thinks about things. It made it clear that permission is still important in all sexual interactions and that becoming married does not take away a woman's ability to control her own body and be protected by criminal law.

⁸ Indian Legal Solution, <<https://journal.indianlegalsolution.com/2020/04/14/marital-rape-comparison-of-india-with-foreign-countries-raj-aryan>> (last visited on 11 April, 2026)

CANADA

Since 1983, Canada has criminalized marital rape, treating all forms of non-consensual sexual activity equally, regardless of the relationship between the parties. The Canadian Criminal Code underscores the principle of affirmative consent, requiring clear and voluntary agreement to sexual activity. Importantly, the abolition of spousal immunity ensures that being married does not exempt individuals from prosecution, reinforcing the legal recognition of personal autonomy and the right to refuse consent within marriage.

UNITED STATES

By 1993, all 50 states in the U.S. had made marital rape a crime, making it clear that permission cannot be assumed in marriage. Even with this progress, enforcement is still not always consistent, and the meanings in the law are very different. In some states, the punishments for rape that happens in a marriage are less severe than those for rape that happens outside of a marriage. Victims may also face procedural problems, such as having to establish force or lack of cohabitation. These differences continue to make it harder for survivors to get equal protection and access to justice.

AUSTRALIA

All states and territories in Australia make marital rape a felony. This means that no matter your status—married or not—consent is essential. The law is forward-thinking, as it recognizes psychological abuse and coercive control as types of sexual assault within marriage. The law embraces a definition of sexual assault that encompasses far more than actual physical behaviors; it allows for behavior, intimidation, manipulation, and even emotional harm, and all of these behaviors can just as profoundly impact a person's safety, dignity, and freedom and therefore require legal protection.

POLAND

Marital rape was a crime before courts began recognizing the seriousness of the psychological harm caused to survivors. The enlightenment about the psychological harm of marital rape reflects major legal and social changes regarding intimate partner violence. Most of the changes and attitudes are due to EU human rights obligations and sustained advocacy from women's rights groups. In addition to changing sexual intercourse laws, advocacy has changed social norms around people's understanding of the concept of marriage and the moral wrongness of coercion and violence against women after marriage begins. Ultimately, marriage cannot

diminish a person's autonomy nor serve as a rationale for non-consensual sex.

INTERNATIONAL HUMAN RIGHTS PERSPECTIVE

International human rights groups always want rape in the home to be a crime. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) specifies that countries should make sure that their laws are fair to women and respect their rights and dignity. It also believes that governments should penalize rape in marriage. In India, Section 375 of the Indian Penal Code (IPC) allows people to rape their partners. The UN Special Rapporteurs have consistently been against this law. These people claim that India's rule goes against the right to be free from violence and the right to have your body protected. These professionals who deal with international law aim to reform the law so that it is in line with international norms, safeguards women's rights, and makes it safer for women to use.

MARITAL RAPE IN INDIA: LOOPHOLES AND CHALLENGES

People in India don't talk about rape by a husband as often as they do about other legal and societal issues. Even if more people are learning about and speaking out against marital rape, it's evident that the Indian legal system still protects spouses who are accused of it. This is due to antiquated regulations that employ an obsolete patriarchal framework. There is nothing in the Bhartiya Nyaya Sanhita, which used to be the Indian Penal Code, that clearly says rape is a crime. This implies that there is no official protection against rape, and many survivors don't get the justice they deserve.

LEGAL LOOPHOLES

Section 63 of the Bhartiya Nyaya Sanhita has a significant hole in it. It claims that a male can't rape a lady if she is under 18. The point of the pact is to make it practically impossible for women to sue their husbands. After getting married, she can't say no to having sex with her spouse.

People in the colonies believed in "marital unity." In this situation, a lady would say that she would always sleep with her spouse. It is the foundation of this formal status.

The constitution says that we should all have the same rights, be treated with respect, and be able to make our own choices. But Indian law still uses this premise. It originates from the law in England.

The law hasn't been clear or fair about how it handles rape that happens at home. The Delhi

High Court reached a decision in 2022 that changed the course of history. Two judges disagreed on whether raping a husband should be a criminal for different reasons. One judge stated it was very important to have consent and the right to regulate your body. The other judge argued it was necessary to keep the marriage joyful. A bigger problem is making sure that people's rights and the rules of society are in line with the Constitution. This conflict is causing a problem.

CHALLENGES IN CRIMINALIZATION

Criminalization of marital rape can face a variety of significant obstacles:

- ***Social Norms and the Patriarchy:*** In many parts of India, marriage is viewed as a sort of sexual license. Just as cultural beliefs generally view wives as property or dependents who are considered to meet their husbands' sexual and household obligations. This makes it all the more difficult for survivors to report abuse—marital rape is often viewed inline as a private issue to resolve rather than a crime.
- ***Stigma and Underreporting:*** Victims of marital rape may be afraid of what will happen to them if they tell someone, and they may feel a lot of pressure from their peers and family. A lot of women may live with their husbands and depend on them for money. Many never report incidents of marital rape for fear of being isolated from their families or retaliation from their husbands. Cases of marital rape remain largely unreported.
- ***Legislative Reluctance:*** In most situations, lawmakers have expressed reluctance to criminalize marital rape due to the potential for the government to infringe on private consensual relationships. In parliamentary debates and reports by the Law Commission have routinely noted the rationale of the stabilizing effects of marriage.
- ***Institutional Support:*** Survivors don't get enough help. It can be challenging to receive legal support for sexual assaults that occur in marriage since there aren't enough counselors, shelters, or hospitals that can help. Victims are significantly less likely to seek justice when there aren't sufficient supports in place.

CONCLUSION

The government in India doesn't see marital rape as a crime, which makes it a significant problem. Rape that happens outside of marriage is against the law, but forced sex within marriage is typically not punished because the legislation is out of date and society thinks it's wrong. This gap in the law makes many women unsafe. The argument reveals that old beliefs about marriage and new ideals about human rights and equality don't necessarily agree.

Academics, advocates, and the judiciary assert that consent must be acknowledged in all relationships, including marriage. Not only would making rape in marriage a crime protect women, but it would also strengthen the idea that marriage is a bond founded on respect and dignity. In conclusion, India has to change its laws and teach people more about their rights to bodily autonomy and safety, whether they are married or not.

