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# **“CRIMINALIZATION OF MARITAL RAPE LAW IN INDIA IS STILL A TABOO”**

**Authored By-Nanda Prasad<sup>1</sup>**

## **Abstract**

MARRIAGE "Sacrifice" and "commitment" among women in order to "save and preserve" dignity, pride, and ideals of the Indian family, which ignores the reality that domestic violence, suicides, and murders are the price women pay in return. Moreover, marital rape is a traumatic experience that they have been dealing with for a long time. In Indian culture, marital rape is the most widespread and repulsive type of masochism. The iron curtain of marriage serves as a barrier to it. An already existing group of males is pushing hard to emphasise how women have abused the legislation against domestic violence and how it be diluted. This is an important discussion. Furthermore, it has been widely reported that women would help push for the implementation of criminal legislation against marital rape. Women who aren't submissive and don't want to engage in sexual activity are shown as anti-family rebels, who turn the bedroom into a battleground. This study examines the argument over criminalising marital rape from the standpoint of gender in an effort to show the everyday possibilities and reality of women's lives in light of violent response against their rights. An examination of violence against women is necessary in order to understand this notion, it concludes.

## **“Rape is Rape”**

You won't find this at Mc Donald's, where customers have the option of customising their burgers to suit their tastes.

**KEYWORDS:** Violence Against Women, Criminal Law, Wives, Marriage, Marital Rape

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## **Introduction**

As the Latin word rapio meaning, "to seize," the word "rape" comes from this root. Forcible seizing is the precise definition of rape. Forced or coerced sex with a woman against her will is referred to as "rape" or "forced sex with a woman against her will," respectively.<sup>2</sup>

Rape is defined under Indian penal code section 375. An illegal sexual intercourse between men and women without the permission of women or against their will under any scenario mentioned in this section constitutes rape.<sup>3</sup> Committee led by Justice J S Verma was requested to look at potential changes to criminal law so that a person suspected of committing a severe kind of sexual assault on a woman might be tried and punished more quickly. Within 30 days after receiving notification, the committee was required to provide its report. Sections 375, 376 and 376 A to 376 D of the Indian Penal Code were suggested for modification and replacement by the committee in its report to improve the effectiveness and deterrence of the legislation against sexual assault of women and girls. In most cases, this advice was put into law.<sup>4</sup> As defined in Section 375 of the Indian Penal Code, the offence of "Rape" is punishable under Section 376. However, the Act has not been able to protect married women who are raped by their husbands.

## **Exception To Rape: Marital Rape**

A marital rape occurs when a man engages in sexual activity with his wife without her permission and does so under duress, including the fear of physical assault or mental suffering. Physical and sexual abuse on a level that is considered to be the brutality of perversion perpetrated by her own spouse against her. According to the statistics, a young married woman is burnt or beaten to death every six hours, and some even commit suicide as a result of the mental abuse they get from their husbands. It is an exception to Section 375 that non-consensual sexual contact between a male and a woman who is at least eighteen years old is not regarded as rape in the eyes of the law. Although the rape is forceful and non-consensual, it remains beyond the scope of rape.<sup>5</sup>

Because of sexual intercourse, it is thought that the husband is protected against becoming the victim of marital rape. In the event that her spouse wants to have sex with her, regardless of whether she is willing or not, she is obligated to comply with his wishes and desires. Also strives to protect the family by preventing false, falsified and motivated claims of rape by the woman against her husband and the practical problems that would occur in such a court proceeding.<sup>6</sup> Sexual intercourse with a woman whose marriage to him is invalid because he was previously married and had a surviving spouse and who was aware of the first marriage constitutes rape, notwithstanding the fact that he was already married.

<sup>7</sup>It is an offence under Indian Penal Code Section 375 (a) to (d) to engage in further non-consensual sexual intercourse with one's own wife who is separated or otherwise living apart from

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<sup>2</sup> Bhupinder Sharma V. State of Himachal Pradesh AIR 2003 SC 4684, (2003) 8 SCC 551.

<sup>3</sup> Aman Kumar V. State of Haryana AIR 2004 SC 1497, (2004) 4 SCC 379.

<sup>4</sup> Gazette of India, Extraordinary, Part II, s 3, sub-s (ii), dated 24 December 2012.

<sup>5</sup> <https://medium.com/legis-sententia/marital-rape-in-india-what-stand-does-the-law-take-deb55e8a7048>.

<sup>6</sup> <https://www.slideshare.net/cpjChs/women-and-law-1>.

<sup>7</sup> Bhupinder Singh V. Union Territory of Chandigarh (2008) 8 SCC 631, (2008) Cr LJ 3546 (SC).

the husband.<sup>8</sup> A man who engages in sexual activity with his wife without her consent while they are living apart is subject to a harsher penalty than a man who engages in sexual activity with his wife under the age of fifteen, which falls within the definition of rape under the provisions of section 375. On prima facie satisfaction of circumstances constituting the offence, no court may take notice of the husband's sexual intercourse offence upon a complaint being filed or made by the wife against him.

## **Marital Rape Types**

Legal academics have recognised the following three types of marital rape as frequent in society:

The term "abuse of abuse" refers to a variety of ways in which a woman may be physically and sexually abused in a relationship. It is possible that some women are mistreated after a physically violent event in which the husband tries to make apologies and pushes his wife to have sex against his will. Most victims of marital rape fall under this group.

In "only by force" rape, men use just the amount of force required to compel their wives. The abuse may not be typical in these partnerships. In most cases, an assault occurs after a woman has refused to engage in sexual relations.

Other women are subjected to a "sadistic" or "obsessive" rape, which involves torturing and/or "perverse" sexual practises and is often physically abusive.

## **India And The United States: A Comparison Study**

It is estimated that more than two-thirds of married Indian women aged 15 to 50 have suffered physical or sexual abuse at the hands of their husbands. Nearly 6,500 incidents of women being killed by their spouses or their husband's relatives were documented in 2005.

### **RAPE IN RELATIONSHIPS IN THE U.S.**

In 2006, UN Secretary General Ban Ki-moon conducted a comprehensive review of all types of violence against women, including marital rape. According to the report, rape by a spouse is not a crime in at least 53 nations. Marital rape is becoming a far more serious crime in the United States. Many nations' rules regarding marital rape are vague, making it difficult to determine whether or not a perpetrator may be punished. Sometimes acts of forced sexual intercourse may be prosecuted even if the legislation does not exist. Those nations where rape laws exempt husbands, where the Penal Code specifies that a man's sexual intercourse with his wife is not rape, are those countries where the Penal Code states that rape laws exclude husbands.

### **INDIAN MARITAL RAPE HISTORY**

The Indian criminal code, under section 375, states unequivocally that "the sexual contacts of a man with his wife, his wife who is not less than 15-18 years old, are not rapes. The punishment for violating Article 376 of the Indian Criminal Code is specified in this article. As stated in this section, the rapist must be sentenced to at least seven years in jail, but may be sentenced to life or to a maximum of ten years, and may also be fined or both.

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<sup>8</sup> Bishnu Dayal V. State of Bihar AIR 1981 SC 39.

For example, the instance of Saretha Venkata Subbaih<sup>9</sup> demonstrates for centuries, it was thought that the rights and obligations of married couples are like a creation and dissolution, rather than the length of a private contract between two individuals.

The Spousal Association does not disregard the need of personal space. Therefore, there is no penalty for marital rape, and the cure remains with the perpetrators of such crimes. Judiciary's function in Indian society. There was a sense that a new legislation against sexual assault was required. The prior legislation did not distinguish between different sorts of sexual assault. In *Sakshi v. Union of India*<sup>10</sup>, the Supreme Court had acknowledged that the legislation pertaining to the violation had flaws and had recommended that the law should be changed by the legislators. After parliament approved a bill to broaden the definition of rape to include oral and anal actions, the 2013 offence was reclassified as one of the most heinous crimes ever committed because of the modification. There is an increase in the number of cases of marital rape, but the legislators are not aware that this crime should be made a felony. The Indian criminal code for women is ignored by women because they are unaware of the reality of the situation.

The empress *Queen v. Haree Mythee*<sup>11</sup> court judgement, the rape statute does not apply in this case since his wife is beyond the age of 15. Due to her age, the spouse received a punishment in this instance. In the case of *Sree Kumar v. Perlato Karun*<sup>12</sup>, the Kerala high court found that even while the woman does not reside apart from her husband in a legal separation and is subject to sexual contact against her choice, the conduct does not constitute a rape.

That is why he is accused of raping his wife, despite the fact that the crime was really committed or committed by him. Any legislation passed in India must adhere to the concepts and ideals enshrined in the country's constitution. Unconstitutional laws may be overturned or deemed ultra vires if they do not meet the requisite conditions. Section 375 eliminates the protection for married women based on their marital status by excluding them from the exemption.

Even though there are stringent laws against rape, the Supreme Court recently reminded the Subordinate Court and the Superior Court that in the past, many courts have been more liberal in their approach to punishing individuals who commit this horrible crime. According to a court ruling, a growing number of courts are ignoring the necessity for a commensurate penalty for rapists.<sup>13</sup> As a result, they were cautioned to be on the lookout for false charges of rape motivated by personal or financial gain. Sexual assault accusers must be shielded from unfounded allegations and the possibility that their actions were motivated by malice<sup>14</sup> anger, humiliation, and injury are caused to the defendants<sup>15</sup> by false claims of rape as a rape victim. Rape is defined as a crime by the court and the courts, and so the issue must be answered within the legal limitations. Justice must be served and the punishment must be in accordance with the legislative order and discretion granted to the court.<sup>16</sup>

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<sup>9</sup> AIR 1983 AP 356.

<sup>10</sup> AIR 2004 SC 3566, 2004 (2) ALD Cri 504.

<sup>11</sup> (1890) 18 Cal 49.

<sup>12</sup> 1999 (2) ALT Cri 77, II (1999) DMC 174.

<sup>13</sup> *Shimbhu v. State of Haryana* AIR 2014 SC 739, (2014) Cr LJ 308 SC.

<sup>14</sup> *Radha v. State of Madhya Pradesh* (2007) 12 SCC 57, 2007 Cr LJ 4704 SC.

<sup>15</sup> *Narendra Kumar V. State (NCT of Delhi)* AIR 2012 SC 2281, (2012) 7 SCC 171, (2012) Cr LJ 2033 SC.

<sup>16</sup> *Shyam Narain V. State NCT of Delhi* AIR 2013 SC 2209, (2013) Cr LJ 3009, (2013) 7 SCC 77.

## **Position Of The Law In India On Marital Rape**

Marital rape is a real problem in India, yet it is not criminalised. Some nations' legislatures have made marital rape an offence; others' courts have taken an active part in making it an offence; yet the judiciary in India appears to be working in circles. In the case of *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>17</sup> When it came to the right to life guaranteed by Article 21 of the Constitution, the Supreme Court said that rape was a crime against that right since it violated "the most valuable basic rights" of the victim. His refusal to acknowledge marital rape<sup>18</sup>, on the other hand, disproves this assertion. Even though India's domestic violence law has made considerable progress, the focus has remained on physical abuse rather than sexual assault. There is now no governmental protection for women who want to report their husbands' sexual assault because of the Indian Penal Code of 1860 Section 375, which exempts rape in marriage.

Sir Matthew Hale, C.J., a seventeenth-century English jurist, was the inspiration for this exception. "Hale's Words"- It is impossible for the husband to be held liable for a breach he committed against his legitimate wife since the woman has given herself in kind to her husband with their joint agreement and marriage contract<sup>19</sup>.

Once married, a woman has no right to reject sex with her spouse, as this established. As a result, men are given "permission to abuse" their spouses in clear violation of human rights standards.

Rape law only applies to two categories of married women: those under the age of 15-18<sup>20</sup> and those who have been divorced or legally separated from their spouses<sup>21</sup>. In contrast to the harsher penalties associated with raping a 12-year-old girl, a rapist who marries the victim may get away with a shorter sentence when the victim is under 15 years old. Section 376-A of the Indian Penal Code, enacted in 1860, made it a crime to violate a man's court-ordered separation from his wife. This was a step toward criminalising domestic abuse. On the basis of the Joint Committee's 1972 recommendations and those of the Legal Commission of India's<sup>22</sup>, this amendment was enacted. The idea that marriage provides a licence for rape was rejected by the Committee. This means that a spouse may now be charged and imprisoned for up to two years if his wife has a sexual contact

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<sup>17</sup> (1996) 1 SCC 490.

<sup>18</sup> Tandon, N. & Oberoi, N., *Marital Rape — A Question of Redefinition*, Lawyer's Collective, March 2000, p. 24.

<sup>19</sup> 1 Hale, *History of the Pleas of the Crown* 629 (1778).

<sup>20</sup> Exception to Section 375 of the Indian Penal Code, 1860.

<sup>21</sup> Section 376-A of the Indian Penal Code, 1860.

<sup>22</sup> Law Commission of India, 42nd Report, 1977, Indian Penal Code, para 16.115, p. 277.

with another man without his agreement, and if she also lives apart from him already or by order or habit. As a result, the law against marital rape is still incomplete, and Parliament must do much more to address the problem. A light of hope was seen when the Legal Committee in its 42nd Report advocated the inclusion of a man's sexual contacts with his underage wife as a crime.<sup>23</sup> The suggestion was rejected by the joint committee that examined the idea. Even if a husband raped his wife at any age, the Committee said he couldn't be prosecuted. Sex comes with the territory when a guy marries a woman.

According to the Penal Code of India, if a man has intercourse with his wife and she is at least fifteen years old, it is not rape. This is a position supported by many women's groups including the National Women's Commission. However, the Indian government's working committee on women and children argued that there was a bigger discussion to be had on this topic. Women's rights legislation and programmes were the focus of the task group. Most essential of the Task Force's four recommendations is a change to the definition of a violation in the Indian Penal Code. He argued that the term "rape" should be widened to include all types of sexual violence. Report: The Legal Commission's definition of "sexual violence" might be implemented in its place since "it is wide, universal, and acceptable," according to the recommendation. Task Force members likewise backed away from their recommendation to include marital rape in the revised definition, like the Legal Commission. Currently, Indian legislation does not give appropriate protections for women's right to self-determination in sexuality and physical integrity.

## **Violation Of The Constitution**

The Constitution of India guarantees a number of essential rights, and it is very uncommon for these rights to clash. The Supreme Court of India has defined its duty as an interpreter capable of bringing together competing basic rights in several situations. Even if religious liberty is a basic human right, the court encounters enormous obstacles when using the idea of harmonious construction to reach a decision. It is difficult to establish a boundary between religion and personal law in India because of the sensitive nature of these matters. In the guise of religion, every change to personal laws has the potential to destabilise the nation. Marriage is one of such issues because of its firm foundation in patriarchy. In India, marriage is governed by the particular rules of each religious group.

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<sup>23</sup> Ibid.

Human rights-based reform of the marriage system is seen as an attack on the institution of marriage. In India, the issue of rape in the womb has traditionally been met with a ferocious response. Eugen Ehrlich summed it up this way: "Legislation, legal research, and judicial judgments are not where legal growth finds its centre of gravity; instead, it is in society as a whole. As a judge or jurist, it is your responsibility to make sure that the "law of life" and the "formal norms of the system legal" are properly integrated." He is certain that he can end marriage as we know it. It shows a conflict between the right to life (Article 21) and the right to freedom of religion (Article 1). (Article 25). The fight between autonomous thinking and UOI was also evident in this situation. This time, the Indian government's inconsistencies are the culprits. The penal code was discovered. Underlines the grave issue of rape in marriage among women between the ages of fifteen and eighteen. A legal challenge has been made against the exception<sup>2</sup> of Section 375 of the Indian Penal Code. Defendants' claims of rape against an underage victim will not be affected by the permission of the girl, according to the sixth description of therapeutic § 375. Exception 2, on the other hand, stipulates that a man's sexual interactions or activities with his wife are not rapes if the woman is at least fifteen years old. As defined by different Indian regulations designed to ensure the safety of girls, the issue at hand was the legal age at which a girl may agree to have intercourse with another person. A continuing battle between Article 21 and Article 25 of Indian Constitution is highlighted by the Union of India's concerns about marital abuse, which threaten to ruin marriage as we know it, as well as Supreme Court's exemption from express responsibility for such abuse of married women adults.

## **A Comparative Study Of Marital Rape Criminalisation**

Most civilizations across the globe have a history of unequal relationships between husbands and wives. Since the dawn of time, women have been represented as the property of their husbands. In all of the world's most prominent faiths, the depiction of women as property has always been consistent. This illustration was discovered in a Victorian-era home.

In the same way that Manusmriti<sup>24</sup> would be, all faiths feature polygamy and other regressive customs that show that women have never been equal partners in marriage. Throughout the second wave of feminist movements, equal rights for women have been a major priority, notably

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<sup>24</sup> Samparna Tripathi, "Marital Rape and not its criminalization, debases society", The Wire, Sep.5, 2017.

in the areas of family, sexuality, and work<sup>25</sup>. In the instance of marital rape, the husband was awarded immunity because of his higher status in the marriage. Sir Matthew Hale, president of the Supreme Court of Justice, made the first mention of the issue in the law in his 1736 history of the crown motives, in which he stated that- "Because his wife gave herself in this way to her husband, who cannot withdraw because of mutual consent and the marriage contract, he husband cannot be guilty of rape committed alone for his legal wife." There are several places where customary law does not criminalise marital rape because of this belief "Indy. As a rule, Hale had mixed feelings towards the British legal system whenever it came up for discussion. The famous R v. R<sup>26</sup> judgement, on the other hand, House of Lords abolished customary law's marital misconduct exemption and held<sup>27</sup>

Modern society views marriage as a partnership based on equality, rather than as a relationship in which the woman is seen as the husband's property. In Hale's view, a wife's agreement to sexual intercourse with her husband is irreversible, regardless of her condition of health or how she is feeling at the time of the encounter. Any rational individual in today's world would find such exemption to be completely unacceptable.

### **Section 375 Contradictive Nature**

Under the PCMA in India, a marriage between an 18-year-old and a female under the age of 18 is penalised (only voidable). A spouse who sexually assaults his wife because she is the mother of a girl child is guilty of an offence under Section 6 of the POSCO Act known as "aggravated penetrative sexual assault." Exception 2 to Section 375 of the IPC, on the other hand, exempts from the definition of rape sexual relations with a spouse under the age of 18. The two clauses are diametrically opposed, and this must be reconciled.

Using this Court's Harmonious reading of the issue is not an appropriate approach. A minor bride's mental and physical distress can't be protected by a fresh interpretation of this law. Making child marriages void ab intio (as provided for by the State of Karnataka) and invalidating Exception 2 to Section 375 of the IPC would have been a great alternative.

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<sup>25</sup> Elinor Burkett, Women's Movement, Political and Social Movement, available at <https://www.britannica.com/topic/womens-movement>.

<sup>26</sup> (1992) 94 Cr App R 216.

<sup>27</sup> Bid.

Furthermore, explanations like the fact that child marriage is a longstanding custom in many regions of the country are insufficient excuses for continuing these abusive practises. Legislation to address these issues is urgently required.<sup>28</sup>

Section 375's discriminatory character has been the subject of a well-known piece of case law.

As a result, marriage is no longer seen as a hierarchical institution where the woman must serve as her husband's subordinate. To some degree, Hale's idea indicates that a woman has given her irreversible approval to have sex with her husband and partner under any and all conditions, and although this may seem fair, it is unacceptable. In 1976, South Australia became the first country in the world to ban all forms of rape outside of marriage. 2012 was a good year for the economy. A decision by the High Court of Australia reaffirms this ban. In 1983, Canada followed, and in 1985, New Zealand did the same. Notably, the exclusion of marital rape was found to be illegal in the *People v. Freedom* decision of the New York Court of Appeals in 1984, and the theory of continuous consent was rejected. The exemption from civil marriage has been repealed in all states by the end of the 20th century, although, marriage rape is still treated differently from non-marital rape in the criminal justice system. Only two nations in South Asia, Nepal and Bhutan, outlaw rape of a spouse. UN Women's Report 2011 found that just 52 nations out of 179 countries have committed conjugal or criminal offences and determined that over 2.6 billion women live in countries where they are not expressly criminalised. The rape of a married woman is now illegal in 70 nations throughout the globe.

## **Independent Thought Vs. UOI**

To bring attention to the plight of young girls who are married off between the ages of 15 and 18, a registered child rights organisation filed a petition under Article 32 in the public interest. IPC Section 375 defines the age of sexual consent at 18 years, which means that anybody who engages in sexual intercourse with a minor, even if she consents, is a felon under the law.

But by Exception 2 to Sec 375, if a girl child between 15 and 18 years of age is married, her husband can have non-consensual sexual intercourse with her, without being penalized under the IPC, only because she is married to him and for no other reason. The right of such a girl child to bodily integrity and to decline to have sexual intercourse with her husband has been statutorily

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<sup>28</sup> <http://lawtimesjournal.in/independent-thought-vs-union-of-india/>

taken away and non-consensual sexual intercourse with her husband is not an offence under the IPC. The provision is violative of rights of children and Art 14,15 and 21 of the Constitution of India.

Section 5(n) of the POSCO Act defines aggravated penetrative sexual assault as a crime punishable by not less than ten years in prison and up to a life sentence and a fine if the husband of a girl child commits penetrative sexual assault on his wife. This provision is in direct conflict with Sections 5 and 6 of the POSCO Act.

Last but not least, the Court noted that the provision is arbitrary and violates the rights of children as well as Articles 14, 15 and 21 of the Constitution. A violation of the POSCO Act<sup>29</sup>, which supersedes all other laws, was also discovered. Finally, the Court concluded that "Sexual intercourse or sexual actions by a man with his own wife, the woman not being under the age of 18 years, is not rape," combining the two articles.

### **Judgment In The Case Above**

The two judges came to a congruent yet distinct conclusion after delving into the details of the case. Section 375 IPC's Exception 2 for a girl under the age of 18 is vulnerable to being struck down on the following grounds:-

1. It's arbitrary, it violates the rights of girls, and it's not fair or reasonable, thus it's against Indian Constitutional Articles 14, 15, and 21.
2. It conflicts with POSCO's regulations, which must take precedence.

As a result, the text of Section 375's Exception 2 reads as follows:

"When a guy has sex with his wife, if she is not under the age of 18, it is not rape."

It was made clear, however, that the verdict would only have a future impact.

To be clear, Sec 198(6) only applies to situations of rape of "wives" who are under the age of 18 and cognizance may only be taken according to that section<sup>30</sup>.

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<sup>29</sup> 17 Protection of Children from Sexual Offences Act, 2012 (No. 32 of 2012).

<sup>30</sup> <https://www.news18.com/news/india/delhi-hc-declines-plea-to-direct-centre-to-make-marital-rape-a-ground-for-divorce-2223529.html>.

## **Statistics On Rape In The Womb**

India is one of the thirty-six nations that have not criminalised marital rape.<sup>31</sup> According to a recent UN research, 75% of men want their wives to consent to having sex with them. Even throughout pregnancy and childbirth, women are raped on a nightly basis. Because the attacker is well-known and frequently quite near, the victim suffers both physically and psychologically. Even in industrialised countries, it's a sad fact<sup>32</sup>

## **Scenario International**

In recent years, countries have made it illegal for a husband to coerce his wife into sex. Many legislation in Malaysia, Turkey, and Bolivia were amended in 2007 and 2005, respectively, to that end. Marital rape was criminalised in the United States in the 1970s; the majority of European nations followed suit in the 1990s. In addition, the United Nations has urged India to make rape in married relationships a crime. Isn't it true that this legislation provides a chance for us to demonstrate our progressivism by emulating the United States in many areas?<sup>33</sup>

Arguments against making rape in marriage a criminal offence

1. Since marital rape is so uncommon, it does not need legal attention.
2. Since proving marital rape is near-impossible, criminalising it would be a huge strain on an already overburdened courtroom system.
3. A bitter and dissatisfied wife might falsely accuse her husband of rape, even if he is innocent.
4. In marriage, there is an implied agreement to have sex.
5. Many marriages would be irreparably damaged if there were laws against marital rape.

Proponents of the marital rape exemption claim that if it is approved, the legislation would be abused in the same way as the Dowry law was. It's tough to substantiate charges of marital rape, and that's why I concur. And it only makes matters worse when we use outdated techniques like the two-finger test to back up rape allegations across the board.

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<sup>31</sup> Marital Rape in India: 36 countries where marital rape is not a crime, India Today, Mar. 12, 2016.

<sup>32</sup> <http://www.simplydecoded.com/2015/05/23/marital-rape-trivialisation-vs-criminalisation/>

<sup>33</sup> <http://www.simplydecoded.com/2015/05/23/marital-rape-trivialisation-vs-criminalisation/>

Whether it's a dowry law or a rule against defection, any law may be abused, and that's why we must recognise that the inquiry will include looking into the misuse.

In addition, do we not have anti-discrimination legislation like the Atrocities Prevention Act (SC & ST), 1989? Isn't it possible that they'll be misused? Because the victim's prima facie statement is also required here. Using it to harass another person is also an option here. As a result of this insincere mistrust, we should not avoid our duties.<sup>34</sup>

## Indian Legal Omissions

It's impossible to know what to believe in the justice system when it comes to rape. Women's empowerment against marital rape is hindered by the following legal loopholes:

1. The legal interpretation of Provision 21 of the Constitution of India has widened the area of its applicability, and "the right to live with human dignity"<sup>35</sup> comes under this article. The exemption given by Section 375 of the Criminal Code of India, 1860 is said to contradict Article 21 of the Constitution since it obviously infringes the right of a woman to live with dignity.
2. As stated in Article 14, "the State shall not deny anybody equality before the law or equal protection of the laws within the territory of India," a basic right is guaranteed. A person is protected against state discrimination under Article 14. With being said, there is an exemption under Wives are not afforded the same protection against rape as their husbands under the Indian Penal Code, 1860's Section 375. Consequently, Section 375 of the Criminal Code of India, 1860 is not a fair categorization and so violates Article 14 of the Constitution.
3. Domestic abuse and marital rape do not seem to be under the idea of dignity, despite the fact that the Constitution<sup>36</sup> mandates that every citizen "abandon the negative practises for the dignity of women."
4. Women's equality and respect for human dignity are both violated by what is known as the "Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW), to which India is a party. In addition, the Human Rights Commission

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<sup>34</sup> <http://www.simplydecoded.com/2015/05/23/marital-rape-trivialisation-vs-criminalisation/>

<sup>35</sup> Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

<sup>36</sup> Article 51-A (e) of the Constitution of India.

advocated criminalising marital rape in its 51st session in its decision number. 1995/85 of 8-3-1995 entitled "The eradication of violence against women."

5. Due to the presumption of consent in marriage, no one may be convicted for raping their spouse. A marriage contract includes an implicit language prohibiting the woman from violating this provision by engaging in sexual relations with another man at any time or in any location.
6. While it is illegal to marry a minor under the age of 18, it is lawful to engage in sexual intercourse with a wife under the age of 15 if both parties consent.
7. Even if the girl accepts, it is a crime under India's Criminal Code of 1860 if she is not the husband of the guy involved and is under the age of 16 years old. In this case, however, it is not rape if he has been married for at least 15 years and has not given his permission.
8. According to the Indian Penal Code of 1860, any sexual contact between the age of 12 and 15 years is considered to be a violation. However, the maximum penalty for rape outside of marriage is two years in jail<sup>37</sup>, which is much less than the sentence for rape within of marriage, which is five years.
9. After women's rights advocates secured an anti-discrimination provision in 1983, the courts are hesitant to punish the couples even if they have been separated for a long time and are awaiting divorce.

### **Through The Eyes Of Legislators**

As the RIT Foundation's lawsuit against the Union of India is currently pending in the Delhi Superior Court, the Narendra Modi government's reactionary position that criminalising marital assault "would destabilise the institution of marriage" and "could become a simple tool for 'harassing husbands'" in the case is disappointing. There is a peculiar association between maintaining marriage and not criminalising marital rape, according to the authorities. This administration seems to be highly concerned since it is difficult to see how raping a woman by her husband is any less barbaric than triple talaq or polygamy. The Center's degrading conduct matches our ingrained systemic sexism, which has led to increased subordination of women throughout time.

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<sup>37</sup> Section 376 of the Indian Penal Code. Return to Text.

In addition, the Center argued before the Delhi High Court that "what may seem to be a marital rape to an individual woman may not appear to others. One of the foundations of criminal law is the test of "reasonableness" or a "reasonable person," and these arguments are based on that criteria. The viewpoint of "an average person who is a representative of the community in general" is sometimes employed in criminal law to assess whether an accused's actions or inactions are "reasonable" or "reasonable". Due to the popular belief that marriage offers the husband continual permission for sexual interactions, such an approach seems to be problematic in the context of marital abuse.

A male is always the "rational person" in a patriarchal culture, who assesses a woman's social position. As a result, women are reduced to machines for bearing children, rendering their claims to physical autonomy and the right to self-determination ludicrous. The American psychologist Morton Hunt claims he was one of the first to address the topic of marital rape "There are some men who still feel that husbands should "manage" their wives. As a result of his sexual preferences, he believes that if she doesn't want it when she wants it, he has the right to push her into it. Instead of just a few minutes of sexual pleasure, forcing her reveals to her that he is the sovereign and she is the subject in the most emotional manner conceivable."

Men and women who don't comply to "cisgender standards" are affected by patriarchy and the masculinity of legal norms, as feminist scholars have shown. Marital rape reveals the boundaries of the law because of the inadequacy of law and legal institutions to cope with it. For example, it reveals that laws are more concerned with serving powerful interests than those of disadvantaged or weaker people. There are many institutions in a male-dominated society where women's battle is just as important as their fight against sexism and inequality in the current social structure.

## **New Information Regarding The Marital Rape**

Tuesday, the Delhi High Court rejected a request for a directive to the Centre to draught guidelines for filing a FIR for a divorce-related crime of marital rape, as well as legislation making it a basis for such a charge.

The PIL was thrown down by a panel of Chief Justice D N Patel and Justice C Hari Shankar, who ruled that the court had no authority to intervene in the legislative process. The court further noted that PILs are being filed in the court seeking the creation of new legislation on a regular basis. The PIL argued that incidents of marital rape should be registered in accordance with certain

norms and legislation, in order to establish the accountability, responsibility, and culpability of the relevant authorities.

The petitioner, attorney Anuja Kapur, was urged by the Supreme Court to file a petition in the high court for relief after the Supreme Court declined to accept the case. Her request for government guidance on enacting and enforcing suitable punishments/penalties was also made in this letter.

As of Tuesday, the Delhi High Court rejected to offer a guilty appeal requesting a new rule to encourage divorce, as well as guidance on how to register a FIR for rape in the marital home. Supreme Court President D N Patel and Judge C Hari Shankar got rid of the GDP by claiming that the court cannot control the development of the laws since it is the legislative and not the judiciary's responsibility. The Supreme Court declined to hear the case and sent the petitioner, lawyer Anuja Kapur, to the lower court for redress, prompting her to submit a statement with the higher court.

Other than this, he had sought the help of the government to set appropriate punishments for violations of guidelines and laws that are formed and issued, respectively.

"The act of rape in marriage is not the same as murder, culpable homicide, or rape in and of itself. Human dignity and honour are degraded and reduced to a chat room for his personal pleasure and convenience by this practise. He turns a lady into a walking corpse who has to live in terror of being hurt. Women who are raped suffer long-term physical and psychological damage, according to medical studies "It was as stated in the statement.

There is an uncertainty in the execution of the context of marital rape as grounds for punishment or penalty in the realm of law, according to Kapur's claim. In terms of filing a FIR or a case of marital rape, there is a significant degree of ambiguity among the relevant agencies. The principles and legislation governing the recording of a marital rape case should be clearly defined, so that the duty, responsibility, and responsibility of the parties involved may be clearly established.

In the statement, the organisation stated that "marital rape is not the crime of murder, culpable murder, or rape per se. It denigrates the honour and dignity of a human being and reduces him into a chat room for his own comfort and convenience. He reduces a woman to a corpse, which lives under the constant fear of being hurt."

Medical evidence shows that rape has serious and lasting consequences for women. "Law enforcement officials are still uncertain on how to prosecute or penalise someone who commits rape in the marital setting, according to Kapur's claim. It's difficult for the authorities to know which law to follow when filing a FIR or filing a case of marital rape, so they need clear guidelines for the registration of a marital rape case in accordance with the guidelines and laws framed. Sanctions and punishments should be given to protect the fundamental right guaranteed by the Constitution."

There is no FIR filed by a woman against her husband since spousal rape is not now a crime, he claimed, but the police officials commit him to safeguard the integrity of marriage between the victim and himself. he also mentioned her spouse.

When it comes to determining the worth of a woman, "sexual purity" plays a big role in the minds of males as a ruling class. Therefore, rape against a woman's husband or father might be seen as a crime against property. It was common practise in ancient times for rapists to pay fines or other restitution to the victim's husband or father, rather than to the rapist. A remnant of this approach is the exclusion from marital rape. Therefore, it's argued that if a man compels his wife to engage in sexual intercourse with him, no crime has been committed since the woman is under the man's control and ownership.

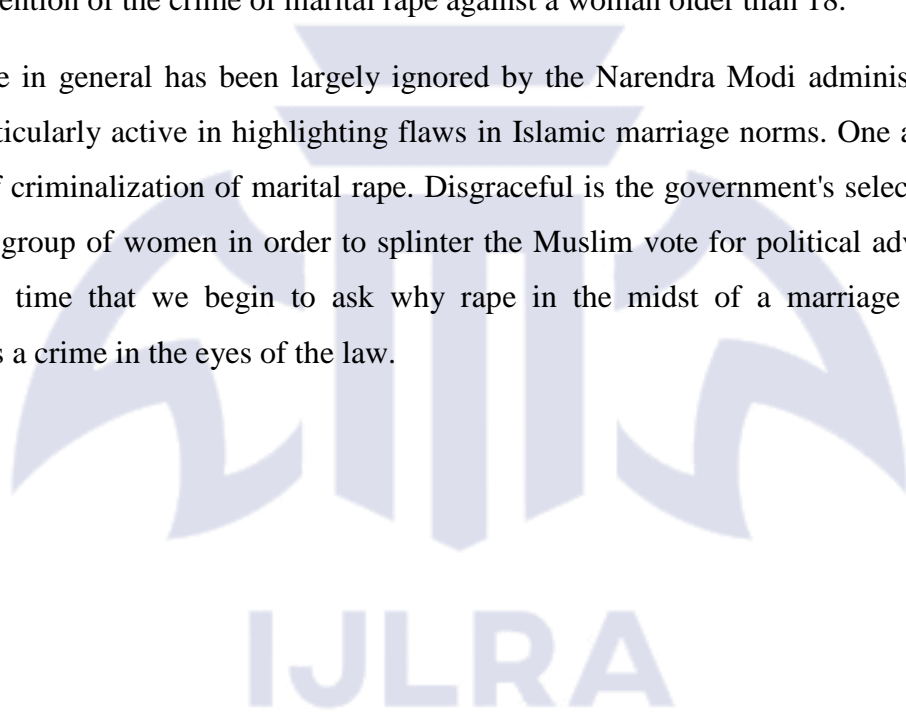
In a poll performed by the International Center for Research on Women (2011), over 20% of Indian males claimed that they had perpetrated sexual violence against a female partner at least once. The National Health and Family Survey (NFHS-4) for 2015-16 found that 5.6 percent of women were victims of "physically compelled to have sex with him, even though he didn't want to" in that category.

After Jyoti Singh's gangrape in 2012, the Verma Justice Committee was formed to improve the country's laws on rape. This should be remembered. The Committee strongly urged that the exemption for rape in married relationships be abolished as a result. The fact that the offender and the victim are married or have another personal connection cannot be treated as a mitigating circumstance that warrants reduced sanctions for the offence, according to the Committee. Furthermore, the CEDAW Committee on India in 2007 recommended "widening the definition of rape to reflect the reality of sexual abuse endured by women and eliminating the exemption of marital rape by specifying violation," which was cited by the committee.

Most of Verma Committee's recommendations were adopted, however the proposal to criminalise marital rape was not included in the 2013 Act to alter criminal law.

According to the ruling in Nimeshbhai Bharatbhai Desai against Gujarat State (2017), which dealt with the issue of domestic rape in great detail, making the crime illegal would eliminate the destructive attitudes that promote domestic rape. However, the court held that the husband is only responsible for inciting the wife to commit rape because domestic rape is not recognised as a crime in India's legal framework. Additionally, in Independent Thought v. Union of India and Anr (2017), the Supreme Court prohibited sexual contact with a younger wife aged 15 to 18, although it made no mention of the crime of marital rape against a woman older than 18.

Gender abuse in general has been largely ignored by the Narendra Modi administration, which has been particularly active in highlighting flaws in Islamic marriage norms. One awful example is the lack of criminalization of marital rape. Disgraceful is the government's selective sympathy for a certain group of women in order to splinter the Muslim vote for political advantage. It's at this point in time that we begin to ask why rape in the midst of a marriage has not been recognised as a crime in the eyes of the law.



## Conclusion

India's laws do not adequately protect women, since they still see women as property and have the right to exploit it, and there are no legal remedies. Despite the fact that a husband's violent and non-consensual sexual act might empower his wife to initiate criminal measures, the notion of marital rape is not included in our criminal statutes. At the very least, this seems to be a violation of Indian Constitutional Articles 14 and 21. The Indian legal system's primary priority is the non-criminalization of marital rape. The court must take action to safeguard women's rights. Sexual assault and abuse against married women are both wrong and deplorable. The handling of sexual assaults is severely constrained under this clause, and as a result, married women are unprotected under the law. Since the second part of the twentieth century, the subject of violence against women and other forms of sexual and domestic abuse has gained growing worldwide attention. Even though it's prohibited in certain nations, marital rape is nonetheless generally acceptable in others. Due to circumstances such as the unwillingness of authorities to pursue criminality, as well as a lack of public awareness that sexual interactions in marriage without permission are prohibited, laws seldom apply.

This is a sensitive issue, and I get it. Atrocious marital offences sparked a 30-year process in the United States, which culminated in the present legislation. Isn't it possible to attempt to implement it in stages? At the very least, it should be deemed a criminal offence in circumstances when it is obvious that a woman has been injured severely.

Before Nirbhaya, rape was a taboo subject in India, but because to the country's unity, most people can now denounce the offence by adopting its name literally. I hope that rape in the midst of marriage will get the same attention.

The framework of sexual offences should not be completely rewritten, notwithstanding the necessity for significant modifications to the legislation, such as making them gender-neutral and removing inequities.<sup>38</sup>

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<sup>38</sup> Because radical restructuring in the United States, Canada and New South Wales has proved disappointing. See Nicolson, D. & Bibbings, L., *Feminist Perspectives on Criminal Law* (1st Edn., Cavendish Publishing Ltd. London, 2000), p. 185.