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# Marital Rape and the Indian Legal Scenario

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## ABSTRACT

*Rape is one of the most heinous crimes that ever exist, legislature and law enforcement institutions of India have overlooked this crime happening in the institute called "marriage". Marital rape is a serious issue which our legislation has failed to notice. Women in India who are raped by their husbands are coming forward nowadays, but our legal system looks over it as they do not recognise the concept of rape in a marriage. There are very dark consequences of marital rape that are much worse and more than physical damage, it is emotional and psychological damage. This paper will elaborate the concept of marital rape and how women in india suffer in silence due to the lack of laws by the help of data and observations. The purpose of this paper is to investigate the alarming need of appropriate laws for marital rape in India.*

**Keywords:** Marital Rape, Sexual Assault, Domestic Violence, Mental Trauma.

## I. INTRODUCTION

Women are generally considered weaker and are seen with a different view solely because of their gender. Both, traits of masculinity and femininity are powerful, however men mostly employs violence and rape to preserve their position of power in certain communities.<sup>2</sup> Women are discriminated in terms of employment, pay, opportunities and so much more but they are also harassed, stalked, sexually harassed, wolf-whistled, asked for dowry, disrobed, domestically abused, forced to being married at an early age, eve teased and in the worst case scenario, raped. Women are, in different forms, victims of gender violence in various social contexts.<sup>3</sup> Women are harassed beyond a certain extent in India, taking a recent example of the second wave of Covid-19 in India, where people are desperate for help and finding leads for oxygen, medicines, beds and food, there are some women volunteers who are posting their numbers on covid relief sites are being harassed as people are sending them offensive and sexually inappropriate pictures and texts. Women who are offering help to the citizens of India are being harassed and molested. India is the world's largest democracy but it still fails

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<sup>2</sup> Goonesekere, Savitri (2004) Violence, Law and Women's Rights in South Asia, SAGE Publications-India.

<sup>3</sup> Merry, Sally Engle (2009), Gender Violence A Cultural Perspective, Wiley-Blackwell.

everyday to protect the women of its country and to make them secure in their own country. In India, women are not only afraid of stepping out of the house post 7:00 P.M, wearing skirts and dresses, travelling alone in public transport, being harassed at their workplace or walking alone in the streets, some of them are also afraid in their own houses. Women in India are domestically abused and sexually harassed by their own husbands, there is no law for marital rape in India.

## **II. RAPE AS A CRIME**

The word “rape” is derived from a latin term “rapio” which means “to seize”. Rape is seizure which is forceful in nature, it is defined under The Indian Penal Code, 1860<sup>4</sup> as an act of sexual intercourse by a male with a female done against her will or consent or consent obtained by putting her or any person in whom she is interested, in fear of death or of hurt.<sup>5</sup> Having sexual intercourse with a girl under the age of 18 with or without her consent is also considered as Rape, it is the fastest growing crime in India and its main victims are young women and girl childs of India. According to the National Crime Records Bureau in India<sup>6</sup>, there has been a startling increase of 87.3% in the number of rape cases registered in India from 1971 to 2011.<sup>7</sup> The punishment for rape in India increased in terms of imprisonment for most sexual assault cases, the defintion of rape was widened and also provided for the death penalty in rape cases that cause death of the victim or leaves her in a vegetative state after the passing of the Criminal Law (Amendment) Act in 2013,<sup>8</sup> which was passed because of the infamous 16th December, 2012 Delhi Rape case<sup>9</sup>. The Criminal Law (Amendment) Act, 2018<sup>10</sup> brought minimum imprisonment for 20 years and possibility of death penalty for rape of a girl under the age of 12. According to some experts there are high numbers of rape cases that go unreported and so in larger picture India’s situation is way worse than what is already documented.<sup>11</sup> These cases mainly go underreported because of the fear of society’s stigmatization, fear of the abuser, fear of family abandonment, shame, threats, etc. The violence and crimes against women have gone

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<sup>4</sup> THE INDIAN PENAL CODE, 1860 : <https://legislative.gov.in/sites/default/files/A1860-45.pdf>

<sup>5</sup>The Laws on Rape and Sexual Crimes by -Dr. Chandra Sen Pratap Singh, <https://www.lkouniv.ac.in/site/writereaddata/siteContent/202005151744272048Chandra%20Sen%20Pratap%20Singh-The%20laws%20on%20rape%20and%20sexual%20crimes.pdf>

<sup>6</sup> The National Crime Records Bureau (NCRB). Home page. URL: <http://ncrb.nic.in/>

<sup>7</sup> The Times of India News, 2012. Rape fastest growing crime in the country. (Dec 27, 2012). At: [http://articles.timesofindia.indiatimes.com/2012-1227/india/36021207\\_1\\_conviction-rateherb-murder-cases](http://articles.timesofindia.indiatimes.com/2012-1227/india/36021207_1_conviction-rateherb-murder-cases)

<sup>8</sup> <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf>

<sup>9</sup> What is Nirbhaya case?, <https://timesofindia.indiatimes.com/india/what-is-nirbhaya-case/articleshow/72868430.cms>

<sup>10</sup> THE CRIMINAL LAW (AMENDMENT) ACT, 2018, 11th August, 2018, [https://www.mha.gov.in/sites/default/files/CSdivTheCriminalLawAct\\_14082018\\_2.pdf](https://www.mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_2.pdf)

<sup>11</sup> Human Rights Watch, 2012. India: Rape Victim’s Death Demands Action. (29 Dec 2012). Available at: <http://www.hrw.org/news/2012/12/29/india-rape-victim-s-death-demandsaction>

beyond any and every limit in India, it has gone to such an extent that a girl child of 7 months is also being raped in this country. Rape in India is not just an offence that has been caused by sexual needs and urges, it is a crime caused by mental sickness, frustration, revenge, idolisation, etc.

### **III. THE CONCEPT OF MARRIAGES IN INDIA**

In India marriages happen for several reasons, mostly traditional. There are many illegal practices that take place in India in the name of this institute called marriage such as taking dowry and child marriage. In this country wives are generally seen as a submissive homemakers who see her husband as an incarnation of god and the husband believes that sex is obligatory in a marriage<sup>12</sup>, he does not ask for the wife's consent and so sexual supremacy is being established by the husband by any means. In India marriages are understood to be an institution who automatically gives the license to a man to have sexual intercourse and to perform various sexual acts with his wife. A woman's consent is understood to be implied once she gets married to a man in this country. A study conducted by The UN Population Fund<sup>13</sup> shows that more than two-thirds of women are sexually assaulted, beaten and raped by their husbands, women who are between 15-49. Women are treated as properties after their marriage, they are treated as liabilities on their parents in most of the rural areas of India before they are married and that liability is passed on to her in-laws after her marriage. Women are deprived of education as they are seen as an object whose only work is to reproduce and do household chores, they are seen as an object on which their husbands take out their frustration by beating them and forcing them to have sex. The lack of appropriate laws in India for married women indirectly sends them a message from the state that their dignity and consent is seized after they are married away.

### **IV. MARITAL RAPE AND ITS POSITION IN INDIA**

A person who has committed rape or any sexual offence is seen as a very evil person in the society although, there is one exception where a man can commit the crime of rape and can get away with it just because he is married to a woman. Under section 375, exception 2 of the Indian Penal Code, 1860<sup>14</sup>, sexual intercourse or sexual acts done by the husband with his wife, wife being above the age of 15, forcefully or against her will, is not considered as rape. Thus, section 375 of IPC legalises marital rape. The heteronormativity of Indian culture that promotes

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<sup>12</sup> Carstairs GM. London: Hutchinson; 1983. *Death of a Witch: A Village in North India 1950 – 1981*.

<sup>13</sup> Health and social consequences of marital violence: A synthesis of evidence from India <https://india.unfpa.org/sites/default/files/pub-pdf/ViolenceReport-25-11-10.pdf>

<sup>14</sup> *Supra*, 4

patriarchy is reflected in the laws relating to marriage in India. A country where the concepts of equality and right to life are enshrined so massively in The Constitution of India<sup>15</sup> in Article 14 and 21 respectively fails to protect the women of its country who are married and want to live a dignified life. It was pointed out by the Supreme Court of India<sup>16</sup> in the case of *J.K.S. Puttaswamy vs. Union of India*<sup>17</sup> that a very important aspect of living with dignity is privacy and that a woman's bodily integrity is breached when she is raped. The biggest upcoming issue in India which is being seriously overlooked is "Marital Rape", frustrated husbands take out their frustration on their wives by beating them, verbally abusing them and even having sexual intercourse with them without their permission or consent. the National Commission for Women has suggested that "marital sexual intercourse by a man with his own wife without consent should also be considered as sexual assault"<sup>18</sup>.

In the case of *Nimesh Bhai Bharatbhai Desai vs. State of Gujarat*<sup>19</sup>, the Gujarat High Court observed that "husbands need to be reminded that marriage is not a licence to forcibly rape their wives."<sup>20</sup> The basic conclusion of this case and the observation made by the bench was that the husband does not own his wife's body and by marrying the woman does not depart from her human rights and the autonomy of her body and hence her consent is very important and that she can withhold it any time she wants.

One of the most terrifying case of marital rape was the case of *Phulmoni Dasi*<sup>21</sup>, where *Phulmoni Devi*, an eleven year old bride died due to excessive bleeding when her husband who was in his mid-thirties tried to consummate their marriage. The husband was acquitted of the charge of rape as there was no law which fell into the purview of marital rape but this case was the reason what the age caveat was added to the Indian Penal Code, 1860.<sup>22</sup>

The question of marital rape was raised in front of the Verma Committee<sup>23</sup> which was headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, the purpose was to

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<sup>15</sup> The Constitution of India, [https://legislative.gov.in/sites/default/files/COI\\_1.pdf](https://legislative.gov.in/sites/default/files/COI_1.pdf)

<sup>16</sup> <https://main.sci.gov.in/>

<sup>17</sup> Justice K.S.Puttaswamy(Retd) vs Union Of India on 26 September, 2018, <https://medium.com/indrastra/analysis-of-puttaswamy-the-supreme-courts-privacy-verdict-53d97d0b3fc6>

<sup>18</sup>National Commission for Women Questions Centre's Silence on Criminalising Marital Rape, <https://the-wire.in/politics/national-commission-for-women-questions-centres-silence-on-criminalising-marital-rape>

<sup>19</sup> *Nimesh Bhai Bharatbhai Desai vs. State of Gujarat*, on 2 April, 2018, <https://www.sconline.com/blog/post/2018/04/18/marital-rape-a-husband-cannot-be-permitted-to-treat-his-wife-like-a-chattel-and-violate-her-dignity/>

<sup>20</sup> Ibid

<sup>21</sup> *Queen-Empress vs. Hari Mohan Maiti*, in 1881, [https://books.google.co.uk/books?id=EFI7tr9XK6EC&pg=PA60&redir\\_esc=y#v=onepage&q&f=false](https://books.google.co.uk/books?id=EFI7tr9XK6EC&pg=PA60&redir_esc=y#v=onepage&q&f=false)

<sup>22</sup> *Supra*, 4

<sup>23</sup>Justice J.S VERMA COMMITTEE REPORT, 2012, <https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>

recommend amendments for faster trials and appropriate punishments to the criminal law for criminals accused of committing sexual assaults against women, the committee was constituted on 23rd of December, 2012 following the Nirbhaya case.<sup>24</sup> In its report,<sup>25</sup> there were recommendations made for marital rape and also recommended criminalisation of marital rape observing that marital rape strikes down the right to live a dignified life of a woman. It also made the following observation:

*“Women do face frequent incidents of discrimination and violence in the household and workplace and many special and protective pieces of legislation have been enacted to protect a woman from such unwelcome incidents, and penal consequences have been provided for the safety of women, but no laws explicitly prohibit a man from raping his legally wedded wife except in exceptions stated in section 375 and section 376 B of the Indian Penal Code, 1860”*<sup>26</sup>

In 2015, a petition was filed in The Supreme Court of India to criminalise marital rape which was dismissed, the apex court in the case of *Arnesh Kumar v. State of Bihar*<sup>27</sup> observed that the collapse of the social and family systems will collapse if marital rape is criminalised amidst the already existing biased laws.<sup>28</sup> It also pointed out that it is the state’s fault that it is still unable to criminalise the acts of sexual assault and rape that happen with a wife, a woman and above all a human who has been promised a right to live a life with dignity. There is no resort for women older than the age of 18 who get raped by their husbands despite recurrent observations and recommendations made by committees, courts, the new legislation and law committee reports. The marital rape victims have to take resort to Section 498-A of the IPC<sup>29</sup> (“perverse sexual conduct by the husband”), or to the Protection of Women from Domestic Violence Act 2005 (PWDVA).<sup>30</sup> This act effectively provides protection against marital rape or other sexual assault crimes against women and domestic violence but the nature of the remedy is civil. The state believes that criminalising marital rape can de-stabilise the institution of marriage. This contention is posed by the state by giving the reasoning of misuse of Section 498A.<sup>31</sup>

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<sup>24</sup> Supra, 9

<sup>25</sup> Supra, 23

<sup>26</sup> Supra, 4

<sup>27</sup> *Arnesh Kumar v. State of Bihar*, [http://dibrugarhjudiciary.gov.in/Judgement%202020/548-2020---Order%20dtd.%2005-10-2020%20\(Crl.%20Misc.%20B\).pdf](http://dibrugarhjudiciary.gov.in/Judgement%202020/548-2020---Order%20dtd.%2005-10-2020%20(Crl.%20Misc.%20B).pdf)

<sup>28</sup> Only 36 Countries Have Not Criminalised Marital Rape, India Is One of Them, <https://www.theleaflet.in/only-36-countries-have-not-criminalised-marital-rape-india-is-one-of-them/>

<sup>29</sup> IPC Section 498 A, <https://devgan.in/ipc/section/498A/>

<sup>30</sup> THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 <https://legislative.gov.in/sites/default/files/A2005-43.pdf>

<sup>31</sup> Supra, 28

## V. FREQUENCY OF SPOUSAL VIOLENCE PHYSICAL AND SEXUAL REPORTED IN LAST 12 MONTHS<sup>32</sup>

AGE	OFTEN	SOMETIMES	NOT AT ALL	NUMBER OF WOMEN
15-19	25.2	63.1	11.7	1413
20-24	17.9	58.8	23.3	4073
25-29	16.4	54.7	28.9	4857
30-39	14.4	46.4	39.1	8275
40-49	10.4	37.8	51.8 1	5103
<b>RESIDENCE</b>				
Urban	14.7	47.2	38.1	5928
Rural	15.4	50.1	34.5	17793
<b>EDUCATION</b>				
No Education	15.3	48.9	35.7	14172
<5 years complete	16.8	47.9	35.3	2260
5-7 years complete	14.9	51.1	34.0	3348
8-9 years complete	15.4	52.3	32.3	2128

<sup>32</sup> National Health and Family Survey (NFHS-4), [http://rchiips.org/nfhs/NFHS-3%20Data/VOL-1/Chapter%2015%20-%20Domestic%20Violence%20\(468K\).pdf](http://rchiips.org/nfhs/NFHS-3%20Data/VOL-1/Chapter%2015%20-%20Domestic%20Violence%20(468K).pdf)

10-11 years complete	14.5	47.0	38.5	1085
12 years or more	9.6	50.1	40.3	729
<b>MARITAL STATUS</b>				
Currently married	15.2	50.5	34.4	22915
Divorced/Separarated	16.3	18.0	65.7	807
<b>MARITAL DURATION</b>				
Married only once	15.0	50.4	34.6	22295
0-4 years	21.2	64.6	14.2	2804
5-9 years	16.3	58.5	25.3	4485
10+ years	13.5	45.3	41.1	15006
Married more than once	18.9	54.1	26.9	619
<b>HOUSEHOLD STRUCTURE</b>				
Nuclear	14.7	49.6	35.7	13152
Non-nuclear	15.9	49.1	35.0	10570
<b>RELIGION</b>				

Hindu	14.8	48.9	36.3	19190
Muslim	17.7	50.9	31.3	3489
Christian	15.0	58.2	26.8	425
Sikh	11.8	58.5	29.7	246
Buddhist/Neo-Buddhist	12.5	38.3	49.2	226
Jain	15.4	44.0	40.6	23
Other	10.9	57.3	31.8	100
<b>NUMBER OF CHILDREN</b>				
0	20.8	57.0	22.3	2023
1-2	15.3	52.8	31.9	9058
3-4	15.2	46.9	37.9	8926
5+	12.1	42.8	45.1	3715
<b>CASTE/TRIBE</b>				
Scheduled caste	14.6	49.7	35.7	5527
Scheduled tribe	17.3	53.0	29.6	2300
Other backward class	14.4	48.3	37.3	9557

Other	16.2	49.1	34.7	6145
Do not know	8.7	54.3	37.0	105

## VI. THE CONSEQUENCES OF RAPE AND SEXUAL ASSAULT

The after effects of what these women in India go through are severe and are often overlooked by their maternal family as well as their in-laws. India is a developing country but it is stagnant in terms of laws made for its women, especially who are married. The women who are sexually assaulted and raped by their husbands or anyone for this matter suffer from social and psychological impacts which is an alarming issue. The mental health of housewives are highly ignored by their husbands and in-laws, this develops suicidal tendencies<sup>33</sup> and other mental health issues like depression<sup>34</sup>, anxiety<sup>35</sup>, having panic attacks, post-traumatic stress disorder,<sup>36</sup> etc. despite of the physical nature of the crime of sexual assault and rape, the impacts are generally psychological and emotional. The cases of domestic violence, sexual assault and rape by husbands go underreported and thus no one is there to help these women to heal from their trauma that can even make them suicidal.

The victims of rape are viewed as “damaged” and may suffer from isolation, be abandoned by friends and families and can go through several mental health traumas.<sup>37</sup> Rape victims are more likely to be suicidal.<sup>38</sup> The risk of longer lasting mental harm is greater if the perpetrator of the sexual assault a family member<sup>39</sup> or if it is done under threats or done forcefully. Marital rape can undermine the ability of a woman as mother to take care of her children.<sup>40</sup> Marital rape is mostly socially tolerated by the women and therefore it goes underreported but that does not mean that the woman does not suffer in silence because of the atrocious acts done with her.

<sup>33</sup> History of trauma and attempted suicide among women in a primary care setting. *Wiederman MW, Sansone RA, Sansone LA Violence Vict. 1998 Spring; 13(1):3-9.*

<sup>34</sup> A prospective investigation of major depressive disorder and comorbidity in abused and neglected children grown up. *Widom CS, DuMont K, Czaja SJ Arch Gen Psychiatry. 2007 Jan; 64(1):49-56.*

<sup>35</sup> Faller KC. Vol. 6. Philadelphia: Diane Publishing; 1993. *Child Sexual Abuse: Intervention and Treatment Issues.*

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<sup>37</sup> Secondary victimization of rape victims: insights from mental health professionals who treat survivors of violence. *Campbell R, Raja S Violence Vict. 1999 Fall; 14(3):261-75.*

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<sup>39</sup> Features of childhood sexual abuse and the development of psychiatric and substance use disorders. *Bulik CM, Prescott CA, Kendler KS Br J Psychiatry. 2001 Nov; 179():444-9.*

<sup>40</sup> Marital Rape and its Impacts: <https://assets.publishing.service.gov.uk/media/57a08b20ed915d3cfd000b4e/aphrc-brief13.pdf>

## VII. CONCLUSION

All over the world, the countries are progressing, they are trying get rid of obsolescent laws which legalises marital rape and are trying to recognise marital rape as a crime, removing all the exceptions to the laws of sexual assault and rape. Countries, like Denmark<sup>41</sup>, Sweden<sup>42</sup>, Poland<sup>43</sup>, Norway<sup>44</sup> and the Czech Republic<sup>45</sup> and many other countries, already have laws for marital rape, while other countries are trying to reform the laws to criminalise marital rape. Many countries have recognised the psychological damage that happens to women after they are sexually assaulted and raped by their own husbands, while many countries like India still fail to recognise it. People who are not in favour of criminalising marital rape have their reasons of women misusing the laws that are already existing such as Protection of Women from Domestic Violence Act 2005 (PWDVA) and dowry, so they believe that women will bring up false cases against their husbands if marital rape gets criminalised. However, the fact that India's existing rape law lacks in many aspects cannot be avoided, the running example is legalising rape done by husbands and exempting them from the clutches of the law. It is contrary to Article 14 and 21 of the Indian Constitution. Not only is marital rape discriminatory in nature, it also breaches a wife's bodily dignity, it is assumed that a woman gives up her basic fundamental rights once she gets married. Hence, presently the only resort against non-consensual marital sex for women in India are civil remedies given under the Protection of Women from Domestic Violence Act<sup>46</sup> or Section 498-A of the IPC<sup>47</sup> for the inhuman acts done on a woman by her husband. To solve this issue, people are made to be aware of what is going on around them in terms of husband cruelty, women in India are totally dependent on laws, in this case the laws are not supportive of the situation of women despite all the observations and recommendations made by the law commission reports, courts and new legislations. The parents of female child in India, especially in the rural parts of the country should be made aware that their daughters are an asset not a liability that has to be shifted to some new family and that if she goes through domestic violence, sexual assault or marital rape, instead of disowning or abandoning her, they should help her. Educating people to view women as their precious partners, to not view women as objects, to give women equal opportunities for the development of society. The men of the country need to be made aware about the

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<sup>41</sup> 2017 Country Reports on Human Rights Practices". *U.S. Department of State*. Bureau Of Democracy, Human Rights, And Labor. 20 April 2018.

<sup>42</sup> Sweden: Penal Code (1962, amended to 2018) (in Swedish)

<sup>43</sup> Michalska-Warias, Aneta (2016). "Marital Rape in Poland from the Legal and Criminological Perspectives"

<sup>44</sup> Country Reports on Human Rights Practices 2017, Norway

<sup>45</sup> Country Reports on Human Rights Practices 2017, Czech Republic

<sup>46</sup> *Supra*, 30

<sup>47</sup> *Supra*, 29

importance of women in their lives and they need to be taught about the concept of consent in a marriage. The cases of women that have suffered or are suffering from marital rape that go underreported have major psychological damages, are sometimes abandoned by their maternal homes and are stigmatized by the society.

India, a country which worships women in the form of goddesses can never be truly developed if the women of the country are being harassed, molested and are suffering everyday physically, mentally and sexually.

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