

---

# GYNAECOLOGICAL AND PSYCHOLOGICAL PERSPECTIVES ON MARITAL RAPE IN INDIA: THE ROLE OF MEDICAL EXPERTS IN ADVOCATING FOR ITS CRIMINALIZATION

---

Paluck Sharma, Research Scholar, Hidayatullah National Law University, Raipur

Dr. Kiran Kori, Assistant Professor, Hidayatullah National Law University, Raipur

Dr. Ayan Hazra, Assistant Professor, Hidayatullah National Law University, Raipur

## ABSTRACT

Despite growing global recognition of marital rape as a serious violation of bodily autonomy and mental well-being, India continues to exempt it from criminal prosecution under Section 375 of the Indian Penal Code. This paper examines the issue through the dual lenses of **gynaecology and psychology**, focusing on how medical and mental health professionals encounter, understand, and respond to cases of marital rape in India. Drawing on clinical experiences, empirical studies, and expert interviews, the research reveals the profound **reproductive health consequences**, such as genital trauma, sexually transmitted infections, and unwanted pregnancies, alongside severe **psychological impacts**, including depression, anxiety, PTSD, and suicidal ideation, experienced by survivors. The paper argues that Indian healthcare professionals occupy a unique and underutilized position in influencing legal and policy reforms. By highlighting the **ethical responsibility and advocacy potential** of gynaecologists and psychologists, the study proposes a collaborative, survivor-centric framework where medical testimony and mental health documentation can serve as powerful tools to challenge the marital rape exception. Ultimately, the paper calls for an integrated approach where healthcare systems actively support the **criminalization of marital rape**, not only as a matter of justice but as a crucial public health imperative.

**Keywords:** Gynaecology, Psychology, Health, Autonomy, Testimony

## 1. Introduction

Marital rape, defined as non-consensual sexual intercourse by a spouse with their partner, represents a profound violation of human rights and a severe form of domestic violence.<sup>1</sup> It fundamentally undermines a victim's bodily autonomy, dignity, and integrity, irrespective of the legal or social context in which it occurs. Globally, the legal recognition and criminalization of marital rape vary significantly. While over 100 countries have explicitly criminalized this act, India remains a notable exception. This places India among a minority of nations where marital rape is not explicitly outlawed, despite international human rights standards advocating for its criminalization. More than 2.6 billion women worldwide live in countries where marital rape has yet to be explicitly criminalized, underscoring a pervasive global challenge.

The non-recognition of marital rape as a cognizable criminal offense in many jurisdictions, including India, is deeply rooted in historical and patriarchal ideologies that have long shaped societal conceptions of marriage. These ideologies often prioritize the preservation of traditional power dynamics within the marital unit, effectively relegating women's autonomy and bodily integrity to a secondary status beneath male authority and control within the domestic sphere. The enduring nature of these archaic legal principles, despite global advancements in gender equality and human rights, signifies a powerful societal resistance to challenging established patriarchal power structures within the domestic realm. This resistance represents a fundamental denial of a married woman's individual personhood and autonomy, reducing her to an object of conjugal rights. The historical genesis of the marital rape exception (MRE) can be traced back to Lord Matthew Hale's 1736 postulate, which asserted that a wife, by entering into marriage, implicitly gives her consent to sexual relations with her husband, a consent she "cannot retract". This "implied consent" theory, coupled with the "property theory" where a wife was considered her husband's chattel, forms the historical bedrock of the MRE. This deep-seated ideological resistance implies that achieving legal reform transcends mere legislative amendment; it necessitates a fundamental societal re-evaluation of the institution of marriage, the concept of consent, and the inherent rights of women.

### A. Problem Statement: Marital Rape in India and its Legal Exception

India's legal framework, primarily Section 375 of the Indian Penal Code (IPC), defines rape but includes a controversial Exception 2. This exception stipulates that "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen

years of age, is not rape". The recently enacted Bharatiya Nyaya Sanhita (BNS) has retained this exception under Section 63, although it has raised the age of the wife from 15 to 18 years. This legal provision effectively legalizes non-consensual sexual acts between married partners, thereby creating a significant loophole that denies protection to wives against sexual assault by their husbands.

The discrepancy between this legal fiction and the lived reality of women in India is stark. The prevalence of violence within marriage in India is alarming. The National Family Health Survey (NFHS) revealed that one in three Indian women aged 15-49 years had experienced some form of violence from their spouses. More specifically, 6% of married Indian women reported sexual violence at the hands of their husbands. Another study indicated that as high as 80% of women reported experiencing coercive sex by their husband at some point in their lives, with 55% reporting it within the last 12 months. The legal exemption for marital rape creates a profound and dangerous disconnect with this documented widespread reality of spousal violence and coercive sex experienced by Indian women. If a substantial proportion of women face violence and coercive sex within marriage, yet the law explicitly states that such acts are not rape, it implies that the legal system actively disregards a significant and pervasive form of gender-based violence. This legal vacuum not only permits abuse to continue unchecked but also implicitly normalizes it within the marital context. By denying a criminal classification, the law effectively communicates to victims that their experiences of sexual assault within marriage are not criminal and, consequently, not worthy of state protection or intervention. This institutionalized denial can further disempower victims and reinforce their silence. This legal denial exacerbates the vulnerability of married women, trapping them in cycles of abuse without adequate legal recourse. It also contributes significantly to the underreporting of marital sexual violence and a severe lack of official data that accurately reflects the true burden of this crime, thereby hindering the development and implementation of effective policy interventions and support systems.

## **B. Research Questions and Significance of the Study**

This paper aims to comprehensively explore the gynaecological and psychological consequences of marital rape on women in India, critically analyse the current legal and societal landscape that perpetuates this issue, and examine the pivotal role medical experts

can play in advocating for its criminalization. The study holds significant importance as it endeavours to bridge the existing gaps between legal discourse, public health imperatives, and human rights principles. By providing an evidence-based argument grounded in medical and psychological data, it seeks to underscore the urgent need for legal reform and the establishment of robust, survivor-centric support systems.

## **2. Legal and Societal Landscape of Marital Rape in India**

The marital rape exception in Indian law is not an indigenous concept but originates from an antiquated understanding of marriage embedded in British common law. Its genesis lies in Lord Matthew Hale's 1736 postulate, which asserted that a husband could not be guilty of raping his lawful wife because, through their mutual matrimonial consent and contract, the wife had given herself to her husband in this regard and could not retract it. This "Hale's principle" formed the historical basis for England's marital rape exception and fundamentally considered wives as their husbands' property, a notion rooted in the common law of covertures.

The Indian Penal Code (IPC), drafted in 1834 by Lord Thomas Babington Macaulay based on the codification of English law and effective in 1862, incorporated this exception under Section 375. This direct and explicit lineage of India's marital rape exception to 18th-century British common law reveals a critical dimension: India's legal framework, despite its post-colonial evolution and numerous attempts at reform, continues to embody an archaic and deeply patriarchal concept of marriage.

Despite numerous revisions to the IPC since India's independence, and multiple recommendations for its removal, the broader exception for marital rape has largely been retained. For instance, the 42nd Law Commission Report in 1971 suggested its removal, and the Justice J.S. Verma Committee Report in 2013, established in response to public outrage over sexual violence, specifically recommended the criminalization of marital rape.<sup>3</sup> However, this crucial recommendation was not included in the final Criminal Law Amendment Act of 2013.

While the Protection of Women from Domestic Violence Act (2005) recognizes marital rape as a form of domestic violence, it falls short of criminalizing it, offering only civil remedies such as protection orders. This limitation leaves married women vulnerable to repeated assaults without adequate criminal legal recourse. The persistence of this exception, even after

recommendations from its own Law Commissions and the recent overhaul of penal codes (BNS), suggests that its retention is not merely a matter of legal inertia. Instead, it appears to be a deliberate choice rooted in a desire to preserve traditional power dynamics and the perceived "sanctity" of marriage, even at the expense of individual autonomy and bodily integrity. The recently enacted Bharatiya Nyaya Sanhita (BNS) further entrenches this exception. Section 63 of the BNS retains the marital rape exception, albeit raising the age of the wife from 15 to 18 years, still exempting sexual intercourse by a man with his wife if she is over 18 from the definition of rape.<sup>1</sup> The minor adjustment of the age, while seemingly progressive, fundamentally upholds the principle of implied consent within marriage for adult women, thus maintaining the core discriminatory aspect. This reveals a systemic issue where the state, through its legal framework, implicitly sanctions a form of violence under the guise of protecting a "sacred" institution. This perpetuates gender inequality, undermines women's fundamental human rights, and creates a legal environment where sexual assault within marriage is effectively normalized and immune from criminal prosecution.

### **3. Arguments for Criminalization: Consent, Autonomy, and Fundamental Rights (Articles 14, 21)**

Advocates for criminalizing marital rape vehemently argue that marriage should not, under any circumstances, negate or undermine a woman's fundamental right to consent. They assert that the marital rape exemption constitutes a direct violation of constitutional fundamental rights, particularly Article 14 (equality before the law) and Article 21 (right to life and personal liberty) of the Indian Constitution.

The Indian judiciary has extensively interpreted the Right to Life under Article 21 to encompass a broad spectrum of rights, including the right to live with dignity, to have safe living conditions, and to exercise personal liberty. This interpretation is critical as it explicitly includes a woman's sexual rights and her control over her own body, including the fundamental right to abstain from sex.<sup>10</sup> The landmark Puttaswamy judgment on privacy further solidified this by recognizing decisional autonomy—whether related to sexual activity, reproductive choices, or personal relationships—as inviolable. India's Constitution, with its robust guarantees of equality, personal liberty, and the right to life with dignity, presents a profound paradox when juxtaposed with the marital rape exception. The Supreme Court's progressive interpretations of Article 21, which now explicitly include a woman's sexual rights and

decisional autonomy over her body, logically extend to the right to consent within marriage.

The marital rape exception (MRE) creates an artificial, discriminatory, and unconstitutional distinction between married and unmarried women, effectively denying wives the same legal protections and remedies available to unmarried women under rape laws.<sup>10</sup> This disparity violates the principle of equality before the law. The continued existence of the MRE, therefore, is not merely a legal oversight but a direct contradiction of established constitutional jurisprudence. It effectively creates a legal fiction where a married woman's fundamental rights are suspended or diminished upon entering marriage, leading to state-sanctioned discrimination.

International human rights bodies, including the United Nations, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Declaration on the Elimination of Violence against Women (DEVAW), have consistently urged India to remove this exception. India ratified CEDAW in 1993, committing to its recommendations, which include ensuring that the definition of sexual crimes is based on the lack of freely given consent. Research indicates that lengthy national membership in CEDAW is strongly correlated with faster criminalization of marital rape globally. DEVAW, enacted by the UN General Assembly in 1993, categorically encompasses marital rape as violence against women. The adoption of DEVAW transformed criminalizing marital rape into a "world society norm". The consistent and strong calls from international human rights bodies further underscore this internal inconsistency, highlighting India's failure to align its domestic laws with its international commitments. The Justice J.S. Verma Committee, in its 2013 report, specifically recommended deleting the marital rape exception and broadening the definition of sexual violence; however, this crucial amendment was not included in the final legislation that passed. The continued existence of the MRE undermines the very foundation of India's constitutional commitment to human rights and gender equality. It signals a systemic acceptance of gender-based violence within the most intimate relationship, thereby perpetuating a culture where women's bodily integrity is conditional. This legal anomaly not only denies justice to countless victims but also sends a dangerous message that a woman's consent is irrelevant once she is married.

#### **4. Arguments Against Criminalization: Sanctity of Marriage, Misuse Concerns, and Alternative Remedies**

Opponents of criminalization frequently argue that recognizing marital rape as a crime could severely disrupt the institution of marriage, which is deeply rooted in Indian society and cultural norms.<sup>1</sup> The Indian government has formally opposed criminalization, stating in an affidavit to the Supreme Court that while a husband "certainly does not have any fundamental right to violate the consent of his wife," criminalizing the act as "rape" within marriage "may seriously impact the conjugal relationship and may lead to serious disturbances in the institution of marriage". This position reflects a prioritization of the perceived "sanctity" of marriage over individual rights. The argument that criminalizing marital rape would "destroy the institution of marriage" is a powerful rhetorical device that effectively conflates the institution of marriage with the perpetuation of male control and female subservience. This argument implicitly suggests that a marriage *requires* the husband's right to non-consensual sex, which is a deeply regressive and harmful view of conjugal relations.

Concerns are also widely raised about the practical challenges of proving marital rape in court due to its private nature. Furthermore, a prominent argument against criminalization is the potential for misuse of such a law, particularly in contentious divorce and custody battles. Men's rights NGOs actively lobby against criminalization, driven by the conviction that women frequently misuse laws against men. However, the concerns about "difficulty in proving" and the "potential for misuse" are common and often unsubstantiated tropes historically employed to resist legal protections for vulnerable groups. As articulated in legal discourse, "all laws are subject to potential misuse," and denying an entire class of victims' legal protection based on the mere *possibility* of misuse constitutes an "abdication of responsibility".

The government and other opponents contend that there are already sufficient legal protections available for married women against sexual and domestic violence. They cite the Protection of Women from Domestic Violence Act (2005), which recognizes sexual abuse as a form of domestic violence, and other sections of the IPC (e.g., Sections 354, 354A, 354B for outraging modesty, and 498A for "cruelty" against a spouse). It is notable that some states in India, along with the National Commission for Women, have expressed support for retaining the marital rape exception. While the Protection of Women from Domestic Violence Act (PWDVA) and other IPC sections offer some civil remedies, these are fundamentally insufficient. They do not provide the same legal recourse, state support, compensation, medical assistance, or access to fast-track courts that criminal rape charges would. This highlights that "alternative remedies" are not equivalent or adequate. These arguments serve to maintain the status quo, prioritizing

a perceived marital harmony (often achieved at the direct expense of women's autonomy, safety, and dignity) and patriarchal control over fundamental human rights and justice. They strategically deflect from the core issue of individual consent and bodily integrity, effectively perpetuating a culture of impunity for sexual violence within marriage.

## **5. Key Judicial Developments and Current Legal Status (Delhi HC, Karnataka HC, Supreme Court)**

The legal battle against the marital rape exception gained significant momentum in 2015 when Khushboo Saifi challenged the exception, sparking crucial public conversations about the need to criminalize marital rape and protect women's rights within marriage. Her case, which was finally heard in court in May 2022 after five years, exemplifies the profound dichotomy between the protection of marriage as an institution and the denial of autonomy and bodily integrity to women.<sup>3</sup>

The Delhi High Court delivered a landmark split verdict on the constitutionality of the marital rape exception in May 2022. Justice Rajiv Shakdher declared the exception unconstitutional, arguing that non-consensual sex in marriage is the antithesis of modern matrimony, which should be a relationship between equals, and that a wife has the right to withdraw consent at any time. Conversely, Justice C Hari Shankar upheld the law, stating that it did not violate any constitutional provisions and that in the institution of marriage, sexual relations, whether consensual or non-consensual, are a legitimate expectation.

In a significant ruling in 2022, the Karnataka High Court allowed a trial against a husband for rape, describing the marital rape exception as an "age-old regressive" concept. The court unequivocally stated, "Rape is rape, be it performed by a man the 'husband' on the woman 'wife'". This progressive ruling, however, was subsequently stayed by the Supreme Court.

The Supreme Court of India is currently seized of the matter, hearing a batch of pleas challenging the marital rape exception. These include appeals arising from the Delhi High Court's split verdict, as well as a fresh petition filed by Dalit activist Ms. Ruth Manorama. In a crucial development in October 2024, the Union government formally opposed the criminalization of marital rape in an affidavit to the Supreme Court. While acknowledging that a husband "certainly does not have any fundamental right to violate the consent of his wife,"



the government argued that classifying such acts as "rape" within the institution of marriage would be "excessively harsh and therefore, disproportionate".

There has also been judicial dissonance regarding the application of Section 377 of the IPC (unnatural offenses) to non-consensual acts within marriage. The Chhattisgarh High Court ruled that Section 377 could not be applied to such acts if it contradicted Section 375's marital rape immunity, thereby removing a recourse previously used by married women. However, the Himachal Pradesh High Court recently diverged from this, holding that 'unnatural sex' with a wife is punishable under Section 377, implicitly rejecting the MRE in that context. The split verdicts in the Delhi High Court and the conflicting interpretations of Section 377 by various High Courts reveal significant judicial dissonance and a profound struggle within the Indian legal system. This indicates a deep-seated tension between upholding traditional societal norms and evolving human rights principles. The strong stance taken by the Karnataka High Court represents a progressive judicial push towards recognizing women's bodily autonomy within marriage. Conversely, the Union government's formal opposition to criminalization signals a strong executive and political resistance to such a change. This dynamic creates an environment of legal uncertainty for victims and underscores the profound societal divisions on this critical issue. The ongoing Supreme Court hearings are thus not merely about legal interpretation but represent a pivotal moment for India to define its commitment to gender equality and bodily autonomy. The outcome of these Supreme Court proceedings will have far-reaching implications for women's rights, the future interpretation of consent within marriage, and potentially reshape the institution of marriage itself in India.

## **6. International Human Rights Framework and India's Obligations (UN, CEDAW, DEVAW)**

The United Nations reports that while at least 52 countries have outlawed marital rape, India remains one of the nations where it is not explicitly criminalized. This places India in stark contrast to global human rights advancements.

India ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on July 9th, 1993, thereby committing to its recommendations. CEDAW urges signatory states to "ensure that the definition of sexual crimes, including marital and acquaintance/date rape, is based on lack of freely given consent, and takes account of coercive circumstances". Research indicates that lengthy national membership in CEDAW is strongly

correlated with faster criminalization of marital rape globally, as nations adopt new behaviours by gradually recognizing norms encoded in treaties.

The Declaration on the Elimination of Violence against Women (DEVAW), enacted by the UN General Assembly in 1993, categorically encompasses marital rape as a form of violence against women. The adoption of DEVAW was a critical juncture, transforming the criminalization of marital rape from a desirable liberal policy to an explicitly codified "world society norm". International Women's Rights Organizations (WINGOs) and other International Organizations (IOs), such as various arms of the UN, play a significant role in applying international pressure and advocating for the criminalization of marital rape. Their direct advocacy efforts contribute to faster rates of legal reform globally, as they develop universal frameworks, distribute legal templates, lobby governments, and hold international conferences.

India's ratification of CEDAW and its participation in UN General Assembly resolutions like DEVAW signify a formal, public commitment to international human rights standards that explicitly condemn marital rape. However, the persistent retention of the MRE in domestic law highlights a glaring and problematic gap between India's international obligations and its national legal implementation. This discrepancy not only undermines India's credibility and standing on the global stage as a champion of human rights but also leaves millions of its own women unprotected despite the state's stated commitment to gender equality. The influence of WINGOs and global institutionalist frameworks indicates that external pressure and the diffusion of international norms can drive change, but the lack of internal political will and societal readiness remains a critical barrier in India. India's current stance represents a significant failure to uphold its international human rights commitments, thereby perpetuating a cycle of violence and discrimination against married women. This situation underscores the urgent need for continued international scrutiny and concerted advocacy efforts to hold India accountable to its own ratified treaties and global human rights norms.

## Evolution of Marital Rape Legislation in India and International Standards

Aspect	Indian Penal Code (IPC) Section 375, Exception 2 (pre-BNS)	Bharatiya Nyaya Sanhita (BNS) Section 63, Exception 2 (post-BNS)	International Human Rights Standards (CEDAW, DEVAW)
<b>Definition of Rape</b>	Sexual intercourse with a woman against her will, without her consent, or under certain other circumstances.	Retains a similar definition of rape, listing seven notions of consent which, if violated, constitute rape.	Definition of sexual crimes, including marital and acquaintance/date rape, is based on lack of freely given consent, and takes account of coercive circumstances.
<b>Marital Rape Exception</b>	"Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape".	"Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape".	Categorically encompasses marital rape as violence against women. Transformed into a "world society norm" for criminalization.
<b>Legal Status</b>	Legalizes non-consensual sex between married partners, denying protection to wives. <sup>1</sup>	Continues to provide a disturbing exception for marital rape, undermining autonomy and equality of women. <sup>10</sup>	Marital rape is considered a human rights violation. Over 100 countries have criminalized it. <sup>2</sup>
<b>Underlying Principle</b>	Rooted in Lord Matthew Hale's 1736 postulate of implied consent and the property theory of wives.	Retains the archaic principle of implied consent within marriage for adult women.	Emphasizes bodily autonomy, dignity, and the right to consent for all individuals, regardless of marital status.
<b>Recommendations for Change</b>	Multiple recommendations for removal from Law Commission (1971), Justice Verma Committee (2013),	Retained despite multiple recommendations for change.	Consistent urging to remove the exception, viewing it as a violation of women's rights.

	and international bodies.		
<b>Civil Remedies</b>	Protection of Women from Domestic Violence Act, 2005, offers civil remedies but does not criminalize marital rape.	Continues to rely on civil remedies under the Domestic Violence Act and other IPC provisions (e.g., cruelty).	Advocates for criminal penalties to provide comprehensive legal recourse, state support, and justice for victims.

## 7. Gynaecological and Psychological Perspectives on Marital Rape

Marital rape, often characterized by repeated assaults, including vaginal, oral, and anal penetration, poses severe and multifaceted gynaecological consequences for victims. Women who experience marital rape are at a particularly high risk for physical injuries and long-term health problems. These injuries can range from immediate acute trauma such as bruises, abrasions, lacerations, and soreness to more serious internal damage like vaginal stretching, torn muscles, and pelvic inflammation. In cases where physical violence accompanies sexual assault, victims may suffer from broken bones, black eyes, bloody noses, and knife wounds.

### A. Gynaecological Consequences and Medical Documentation

The immediate physical trauma, marital rape significantly increases the risk of various reproductive health issues. These include unwanted pregnancies, miscarriages, and stillbirths. The inability of victims to insist on condom use during forced intercourse, often due to threats of physical violence or accusations of infidelity, directly increases the probability of HIV infection and other sexually transmitted diseases (STIs). Studies in India have shown that women who experience sexual violence are significantly more likely to report at least one STD symptom. Other gynaecological complications include bladder infections, chronic pelvic infections, urinary tract infections, painful sexual intercourse (dyspareunia), and even fistula (a tear between the vagina and bladder or rectum). The chronic stress and trauma associated with marital rape can also lead to a suppressed immune system, potentially rendering victims more prone to conditions like cervical cancer. Furthermore, violence against women during pregnancy, including forced sexual intercourse, is a substantial contributor to maternal death in countries like India.

Medical documentation of these physical and gynaecological injuries is crucial for legal proceedings and for providing appropriate care. A comprehensive medical examination for sexual assault survivors evaluates for injury, sexually transmitted infections, pregnancy, and acute or post-traumatic stress disorders. This examination typically involves documenting general and genital trauma, collecting foreign material, and taking various samples such as hair, semen, blood, urine, and saliva for forensic analysis. However, it is critical to note that the "two-finger test" and comments on hymen elasticity or rupture are deemed unscientific, inhuman, degrading, and a violation of the victim's rights, as they have no bearing on a case of sexual violence. The absence of visible injuries does not negate rape, as it can occur due to threats, restraint, or intoxication. Despite the clear medical implications, medical documentation is often absent or missing in cases of marital sexual violence in India, making it difficult for women to legally establish physical harm.

## **B. Psychological Impact: Trauma, PTSD, Depression, and Long-term Effects**

The psychological impact of marital rape is profound and often more prominent than physical injuries, leading to a wide range of short-term and long-term mental health sequelae. In the short term, victims commonly experience intense fear, anxiety, shock, embarrassment, shame, guilt, and nightmares. They may also suffer from dissociative amnesia, an inability to remember important parts of the traumatic event.

The long-term psychological effects are particularly devastating. Marital rape is significantly associated with clinical depression and Post-Traumatic Stress Disorder (PTSD). Studies in India indicate a low to moderate association between marital rape and adverse mental health outcomes, with sexual coercion by an intimate partner being highly prevalent. Victims of spousal sexual abuse often suffer from other forms of intimate partner violence (IPV) as well, including physical, emotional, and psychological abuse, which exacerbates their psychiatric risk. The psychological burden often leads to suicidal ideation and attempts, making mental health interventions critical.

Beyond depression and PTSD, long-term psychological effects include disordered sleeping, disordered eating, intimacy problems, negative self-images, and sexual dysfunction. The constant exposure to violence within marriage, a supposed safe space, destroys the fiduciary nature of the relationship and deeply impacts personal and social relationships, making it challenging for survivors to rebuild trust and intimacy.

Despite the compelling evidence of adverse effects, marital rape remains largely unaddressed in clinical practice, scientific research, and public health surveillance in India. Underreporting of sexual IPV masks the true burden of sexual domestic violence, with only about 10% of victims reporting spousal sexual abuse in India, and only 2-4% seeking help from authorities. This inability to talk about the abuse and seek help further negatively impacts women's mental health, exacerbating stress, anxiety, and depressive symptoms. The societal inattention to the issue, coupled with a lack of infrastructure for screening and help-seeking avenues, makes it challenging to accurately estimate the full consequences of marital rape within Indian society.

### **C. Challenges Faced by Victims: Stigma, Underreporting, and Lack of Support**

Victims of marital rape in India face immense challenges that significantly impede their ability to seek justice and support. A primary barrier is the pervasive social stigma and blame attached to rape survivors. Traditional "marriage myths" and "victim-blaming myths" are deeply ingrained in Indian society, often rooted in honour norms and outdated beliefs that victims provoke rape or that their silence implies consent. These myths, traced to historical texts and cultural narratives, perpetuate the idea that rape strips dignity, and that a woman's honour is tied to her virginity or marital status. This societal pressure can lead to family abandonment, social ostracization, and even pressure to marry the rapist to "bring justice" or avoid "shame".

This deeply entrenched stigma directly contributes to the severe underreporting of marital rape.<sup>13</sup> Many women are unaware that coercive sex by their husband is a violation, let alone comfortable talking about it, due to fear of social stigma. The legal loophole that exempts marital rape from criminalization further normalizes non-consensual acts within marriage, implicitly communicating that such experiences are not criminal and thus not worthy of reporting. This institutionalized denial exacerbates victims' disempowerment and reinforces their silence.

The lack of adequate support systems further compounds the challenges. Healthcare facilities often lack specialized units and medical professionals may lack the training to provide trauma-informed care, leading to inadequate treatment and insensitive interactions. Limited access to mental health services, particularly in rural areas, means that the psychological burden of marital rape often goes unaddressed. The system is

fragmented, forcing survivors to navigate disjointed services for medical care, legal assistance, and counseling. Poor interlinkages between support services, coupled with a lack of quality domestic violence shelters, mean women often have no safe place to go, limiting the effectiveness of counselling and support. Furthermore, some healthcare workers may hold beliefs that women will not discuss marital sexual violence, reinforcing a culture of silence. This systemic lack of support and the pervasive societal stigma create an environment where victims are left isolated and without recourse, perpetuating a cycle of violence and impunity.

## **8. The Role of Medical Experts in Advocating for the Criminalization of Marital Rape**

Medical experts play an indispensable role in documenting the physical and psychological harm inflicted by marital rape, thereby providing crucial evidence for legal and policy advocacy. Their ability to conduct thorough medical-forensic examinations is paramount. These examinations involve evaluating injuries (both general and genital), assessing for sexually transmitted infections (STIs), and determining pregnancy status. Detailed documentation includes recording lacerations, bruising, and other physical trauma to vaginal and anal areas, which are common in cases of repeated marital rape.

### **A. Documenting and Providing Evidence of Harm**

The immediate physical findings, medical professionals are responsible for collecting biological specimens such as hair, semen, blood, urine, and saliva, which can be vital for DNA profiling and identifying perpetrators. The Indian Council of Medical Research (ICMR) has standardized protocols for collecting and preserving forensic evidence, and advanced forensic kits can improve evidence collection, ensuring accuracy and reducing survivor trauma. However, it is crucial that medical examinations adhere to ethical and scientific standards, explicitly avoiding unscientific and degrading practices like the "two-finger test," which has no bearing on proving sexual violence and violates a victim's dignity.

Medical evidence, when meticulously collected and presented, can act as direct evidence, particularly in cases where victim testimony might be challenging due to trauma or age. While the Apex Court emphasizes that "rape is a legal term and not a medical condition," and that the absence of medical evidence is not fatal to a case, medical evidence proving

sexual assault remains highly relevant and important for legal determination. The ability of medical experts to provide a reasoned medical opinion to the court, based on objective findings, is invaluable. This objective data can directly challenge the abstract and often romanticized notions of "marital sanctity" that underpin the legal exception, providing concrete, undeniable proof of the violence and its consequences.

## **B. Medical Expert Testimony in Legal Arguments**

Medical experts can provide powerful testimony that underscores the severe gynaecological and psychological consequences of marital rape, thereby strengthening legal arguments for its criminalization. Their testimony can highlight the long-term physical health problems experienced by survivors, such as chronic pain, irritable bowel syndrome, frequent headaches, and chronic pelvic pain, which are significantly higher for those with a history of sexual assault. They can also detail the reproductive health issues, including unwanted pregnancies, STIs, and infertility, directly linking them to forced sexual acts within marriage.

Crucially, medical experts can articulate the devastating psychological toll, including the high prevalence of Post-Traumatic Stress Disorder (PTSD), clinical depression, anxiety, and suicidal ideation among marital rape survivors. They can explain how these conditions significantly impair a victim's social and occupational functioning, and how the inability to seek help due to societal stigma exacerbates these symptoms. Such expert testimony provides a scientific and human dimension to the legal debate, moving beyond abstract legal interpretations to the tangible suffering of victims. It can directly counter arguments that minimize the impact of marital rape or suggest that existing civil remedies are sufficient, by demonstrating the profound and unique harms that only a criminal classification can adequately address.

The judicial dissonance observed in various High Court rulings, particularly concerning the application of Section 377 to marital sexual acts, underscores the need for clear, evidence-based medical perspectives. Medical experts can help clarify that "rape is rape," regardless of the marital context, by presenting the consistent pattern of harm observed in all sexual assault cases. Their expertise can inform judges and policymakers about the medical realities of forced sex, challenging outdated legal fictions that presume consent



within marriage or differentiate between marital and non-marital sexual assault in terms of severity or impact.

### **C. Public Health Advocacy and Policy Influence**

Medical experts are uniquely positioned to advocate for the criminalization of marital rape from a public health perspective, emphasizing its widespread impact on women's health and societal well-being. By framing marital rape not just as an individual crime but as a significant public health crisis, they can influence policy and public opinion. The alarming statistics from the National Family Health Survey, indicating that 1 in 3 Indian women experience spousal violence and 6% experience sexual violence, highlight the pervasive nature of this issue. Medical professionals can translate these statistics into a compelling narrative about the urgent need for intervention.

Advocacy efforts can include raising public awareness campaigns to challenge traditional notions of marriage and consent, promoting comprehensive sexuality education for women to understand their bodily autonomy, and dispelling myths about rape victims. Medical organizations, such as the World Association for Sexual Health (WAS), already support the criminalization of marital rape, urging the Government of India to align its laws with international human rights standards that uphold bodily integrity and freedom from violence.

Furthermore, medical experts can advocate for systemic reforms within the healthcare system itself. This includes establishing specialized units for sexual violence cases, providing trauma-informed care training for all medical professionals, and improving access to mental health services, especially in rural areas. They can also push for better interlinkages between medical, legal, and counselling services, ensuring a seamless support system for survivors. By highlighting the economic and social costs associated with unaddressed marital rape, including lost productivity and increased healthcare burdens, medical experts can present a strong case for policy changes that benefit not just individual victims but public health at large. Their ethical obligation extends to ensuring that healthcare systems are responsive to marital sexual violence, addressing the absence of standardized protocols, lack of screening programs, and poor gender sensitivity in medical education.

**D. Ethical Considerations and Challenges for Medical Professionals**

Medical professionals in India face unique ethical considerations and challenges when dealing with cases of marital rape. The absence of a clear legal framework criminalizing marital rape creates a moral dilemma, as they are often confronted with severe physical and psychological injuries resulting from an act that the law does not recognize as a crime. This can lead to a perception that their efforts in documentation and treatment may not lead to legal justice for the victim, potentially causing frustration and burnout.

A significant challenge is the lack of standardized protocols or uniform internal guidelines in most hospitals for assisting married women who report sexual violence. While legal protocols exist for minors and survivors of non-marital rapes, these are often not adopted for marital sexual violence. This institutional gap, coupled with large patient loads and insufficient training in gender sensitivity, can lead to inadequate care and insensitive interactions, potentially re-traumatizing survivors. Some healthcare workers may also harbour societal beliefs that women will not talk about marital sexual violence, reinforcing a culture of silence, shame, and stigma. This internal bias, if unaddressed, can hinder effective identification and support for victims.

Furthermore, medical experts must navigate the complex balance between patient confidentiality and the need to document evidence for potential legal proceedings. While survivors have the right to refuse medico-legal examination or collection of evidence, this refusal should not preclude medical treatment. The ethical imperative is to prioritize the survivor's well-being and autonomy while also being prepared to collect evidence if consent is given, recognizing its potential future importance.

Despite these challenges, exemplary physicians and nurses do assist survivors, sometimes risking their own safety. Their ethical commitment to patient care and justice compels them to advocate for systemic changes, including improved funding, equipment, and inter-sectoral collaboration with NGOs, psychosocial counsellors, and the police. The ethical responsibility of medical experts extends beyond treatment to actively challenging the legal and societal norms that perpetuate marital rape, advocating for its criminalization to ensure comprehensive protection and justice for married women.

## 9. Conclusion

The analysis of gynaecological and psychological perspectives on marital rape in India reveals a profound and urgent crisis, exacerbated by an archaic legal framework that fundamentally denies married women their basic human rights. The persistence of Exception 2 to Section 375 of the IPC (now Section 63 of the BNS) is not merely a legal anomaly; it is a direct inheritance of colonial patriarchal ideologies that viewed wives as property, implicitly consenting to sexual acts without retraction. This legal fiction stands in stark contrast to the alarming reality of widespread spousal sexual violence, as evidenced by national health surveys indicating that a significant proportion of Indian women experience coercive sex within marriage. This creates a dangerous disconnect between legal provisions and lived experiences, implicitly normalizing abuse and disempowering victims.

The arguments against criminalization, primarily centred on the "sanctity of marriage" and concerns about "misuse," are revealed to be rhetorical devices that prioritize patriarchal control and a superficial notion of marital harmony over the fundamental rights of women. These arguments fail to acknowledge that existing civil remedies are inadequate and do not provide the comprehensive legal recourse, state support, or justice that criminalization would afford. The judicial landscape, marked by split verdicts and conflicting interpretations, underscores a deep societal struggle to reconcile traditional norms with constitutional guarantees of equality, liberty, and bodily autonomy. India's failure to align its domestic laws with its international human rights commitments, particularly under CEDAW and DEVAW, further highlights a significant gap between its global pledges and national implementation.

In this complex environment, medical experts emerge as pivotal advocates for change. Their unique position allows them to provide irrefutable evidence of the severe gynaecological consequences, including physical injuries, reproductive health issues, and sexually transmitted infections, directly linking these harms to forced sexual acts within marriage. Furthermore, their documentation and testimony can powerfully articulate the devastating psychological impact, such as PTSD, depression, and suicidal ideation, thereby humanizing the abstract legal debate. By framing marital rape as a critical public health issue, medical professionals can compel policymakers and the public to confront the true scale of the problem.

Despite facing ethical challenges stemming from a non-criminalized act and systemic deficiencies within the healthcare system, medical experts have a moral and professional

imperative to lead advocacy efforts. Their role extends beyond clinical care to actively challenging the legal and societal norms that perpetuate marital rape. By consistently documenting harm, providing expert testimony, engaging in public health advocacy, and pushing for systemic reforms within healthcare, medical experts can provide the evidence-based impetus necessary to dismantle the marital rape exception. The criminalization of marital rape is not merely a legal reform; it is a fundamental step towards recognizing the full personhood and bodily autonomy of married women in India, ensuring their right to safety, dignity, and justice within their own homes.

## REFERENCES

1. Sacred Violence: India's Marital Rape Exception, Tulane Univ. J. Pub., <https://journals.tulane.edu/ncs/article/view/3885/3635> (last visited May 20, 2025).
2. The Cost of Silence, Völkerrechtsblog, <https://voelkerrechtsblog.org/the-cost-of-silence/> (last visited May 20, 2025).
3. Priyanka Sharma, Marital Rape and the Indian Legal Scenario, India L.J., [https://www.indialawjournal.org/archives/volume2/issue\\_2/article\\_by\\_priyanka.html](https://www.indialawjournal.org/archives/volume2/issue_2/article_by_priyanka.html) (last visited May 20, 2025).
4. Unveiling the Silent Suffering: A Comprehensive Exploration of Marital Rape in Indian Society, Migration Letters, <https://migrationletters.com/index.php/ml/article/download/9360/6078/23634> (last visited May 20, 2025).
5. Raveena Rao Kallakuru & Pradyumna Soni, Criminalisation of Marital Rape in India: Understanding Its Constitutional, Cultural and Legal Impact, 11 NUJS L. Rev. (2018), <https://nujslawreview.org/wp-content/uploads/2018/01/11-1-Raveena-Rao-Kallakuru-Pradyumna-Soni.pdf> (last visited May 20, 2025).
6. Marital Rape, S3waas, <https://cdnbbsr.s3waas.gov.in/s37a68443f5c80d181c42967cd71612af1/uploads/2025/03/202503191325136963.pdf> (last visited May 20, 2025).
7. S.K. Mohanty & B.M. Singh, Marital Rape and Risk of Sexually Transmitted Diseases and Reproductive Tract Infections Among Young Married Women in India, IUSSP Int'l Population Conf. (2009), <https://ipc2009.popconf.org/abstracts/92144> (last visited May 20, 2025).
8. Pragya Sharma et al., Marital Rape and Its Impact on the Mental Health of Women in India: A Systematic Review, Nat'l Lib. Med., <https://pmc.ncbi.nlm.nih.gov/articles/PMC10021972/> (last visited May 20, 2025).
9. Raveena Rao Kallakuru & Pradyumna Soni, Criminalisation of Marital Rape in India: Understanding Its Constitutional, Cultural and Legal Impact, 11 NUJS L. Rev. (2018), <https://nujslawreview.org/wp-content/uploads/2018/01/11-%E2%80%931-%E2%80%93Raveena-and-Pradyumna.pdf> (last visited May 20, 2025).
10. Challenge to the Marital Rape Exception, Sup. Ct. Observer, <https://www.scoobserver.in/cases/challenge-to-the-marital-rape-exception/> (last visited May 20, 2025).

11. Melanie Hughes & Jalisa Gilmore, Safe at Home? Examining the Extension of Criminal Penalties for Marital Rape in Cross-National Context, 1979–2013, *Law & Soc'y Rev.*, <https://www.cambridge.org/core/journals/law-and-society-review/article/safe-at-home-examining-the-extension-of-criminal-penalties-for-marital-rape-in-crossnational-context-19792013/192D7A6CCFDAADBBDA8FB028A1ABC2A6> (last visited May 20, 2025).
12. How a Men's Rights NGO Got the Delhi High Court to Hear Arguments to Keep Marital Rape Legal, Article-14, <https://article-14.com/post/how-a-men-s-rights-ngo-got-the-delhi-high-court-to-hear-arguments-to-keep-marital-rape-legal-6417d5b090b6e> (last visited May 20, 2025).
13. Challenge to the Marital Rape Exception, Sup. Ct. Observer, <https://www.scobserver.in/cases/challenge-to-the-marital-rape-exception/#:~:text=In%20late%202022%2C%20Dalit%20activist,on%2021%20March%2021%202023> (last visited May 20, 2025).
14. Marital Rape: New Research and Directions, VAWnet, <https://vawnet.org/material/marital-rape-new-research-and-directions> (last visited May 20, 2025).
15. Medical Examination of the Sexual Assault Victim, Merck Manuals—Gynecology & Obstetrics, <https://www.merckmanuals.com/professional/gynecology-and-obstetrics/domestic-violence-and-sexual-assault/medical-examination-of-the-sexual-assault-victim> (last visited May 20, 2025).
16. Guidelines for Medical Practitioners, Ministry of Home Aff., [https://www.mha.gov.in/sites/default/files/2022-09/womensafetyDivMedicalOfficers\\_06082018\\_0%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-09/womensafetyDivMedicalOfficers_06082018_0%5B1%5D.pdf) (last visited May 20, 2025).
17. Casebook on Child Marriage and the Law, UNFPA India, [https://india.unfpa.org/sites/default/files/pub-pdf/casebook\\_26-12-2018\\_final.pdf](https://india.unfpa.org/sites/default/files/pub-pdf/casebook_26-12-2018_final.pdf) (last visited May 20, 2025).
18. View of Marital Rape and Rape: Health Impacts, Survivor Care, and Legal Support, *Afr. J. Biomed. Res.*, <https://africanjournalofbiomedicalresearch.com/index.php/AJBR/article/view/5057/3909> (last visited May 20, 2025).
19. Myths About Rape Victims in India: Understanding the Stigma and Misconceptions, Springer Nature Communities, <https://communities.springernature.com/posts/myths-about-rape-victims-in-india-understanding-the-stigma-and-misconceptions> (last visited May 20, 2025).

20. The Stigma and Blame Attached to Rape Survivors in India, Human Rts. Watch, <https://www.hrw.org/news/2013/01/08/stigma-and-blame-attached-rape-survivors-india> (last visited May 20, 2025).
21. Statement About Marital Rape and Related Issues in India, World Ass'n for Sexual Health, <https://www.worldsexualhealth.net/statement-about-marital-rape-and-related-issues-in-india> (last visited May 20, 2025).