
SEXUAL HARASSMENT WITHIN MARRIAGE: A HIDDEN CATALYST FOR DIVORCE AND MENTAL BREAKDOWN

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ABSTRACT

Marriage is idealized as a sacred union between two parties wherein mutual respect, companionship and mutual consent can become a site of coercion, trauma and disrespect if the sexual autonomy is violated by the husband. The notion of sexual consent within marriage is not respected within the patriarchal society even when multiple legal and social rights have been dealt in by the Courts and Statutes till date. Gender justice remains in the books of the legal system, and marital rape or coercive sexual behaviour still goes unnoticed in the society as it is normalized or dismissed as private matters. This paper will critically examine sexual harassment within marriage which becomes a potential catalyst for divorce and deterioration of mental health of the spouses, with special focus on women.

Sexual harassment in a marriage might lead to psychological trauma, stress, mental disorders, suicidal tendencies and even breakdown of marriage. Article 14, 15 and 21 lays emphasis on gender equality and right to live with dignity, however there are no laws to support sexual harassment in a marriage. It is often considered to be a wife's duty to submit her body and soul to the husband after marriage.

This paper will focus on reconceptualizing the idea of "marital rape" by enacting proper laws and encouraging gender sensitization for the same. The socio-legal transformations can change the shape of the marital laws in India, with the aim of upholding the constitutional provisions.

Keywords: Sexual Violence, Marriage, Marital Rape, Divorce, Mental Health, Gender Justice, Stockholm syndrome.

INTRODUCTION

The term “sexual violence” means infliction of any kind of mental or physical act or violence without the consent of the other spouse. The concept of sexual violence within marriage did not find a place in the legal system of the country as marriage implied irrevocable and permanent consent by the spouses to engage in sexual activities. Moreover, in Hindu legal system, marriage means a sacrament, wherein marriage is an indissoluble and eternal union of the spouses. The purpose of marriage in Hindu law is dharma, procreation of children and continuity of family lineage. In the Islamic society, marriage is a contract between the parties and the main purpose of the marriage is the procreation of children. This belief is deep-rooted in the patriarchal societies of India and the term “marital rape” does not find its place in the Indian Criminal Justice system. It is usually believed that in marriages, the concept of “consent” does not exist as marriage means consent for sexual activities for lifetime. Marriage does not grant the parties unconditional access to each other.

Sexual Abuse in Marriage

Sexual abuse can exist in marriages in various forms. Sexual abuse means any act committed or threatened that is sexual in nature which takes place without the consent of the parties.¹ Marital rape, reproductive coercion, insertion of objects in private parts of a woman, unnatural forms of sexual intercourse and withholding pleasure can also amount to sexual abuse in marriage.²

Non-consensual intercourse with the spouse is a form of sexual abuse faced by the spouses in India. If the consent has been obtained by fear, threat, coercion or any kind of pressure, it cannot be said to be consensual sexual intercourse. Marital rape has not been criminalised in India, except in cases of child marriage.

In marital relationships, sexual abuse can also exist in the form of coercive acts of sexual intercourse, wherein sexual act can be obtained by threatening the spouse of remarriage, abandonment, divorce; or stopping financial support; or also by threatening to harm of the spouse or children. Such acts directly attack the mental health of the spouse, leading to many

¹ <https://help.unhcr.org/turkiye/services-in-turkiye/social-economic-and-civil-matters/sexual-and-gender-based-violence/> last accessed on 4-12-2025 at 09:26 AM

² <https://pmc.ncbi.nlm.nih.gov/articles/PMC8967187/#:~:text=Despite%20the%20clear%20legal%20recognition,reliefs%20to%20the%20aggrieved%20wife.> last accessed on 4-12-2025 at 09:41 AM

kinds of mental traumas and psychological disorders.

If a spouse forces sexual intercourse on the other spouse during pregnancy, ill- health or post-childbirth, it can directly come under sexual abuse. This kind of sexual abuse impacts the health of the women, and it can be treated as physical and mental cruelty both by the Family Courts in India.

In certain cases, it has been found out that the spouse can be compelled to engage in unnatural or degrading sexual activities which can include anal sex, oral sex and other acts entered into for the pleasure of one party. These acts can cause humiliation, emotional distress and physical harm to the other party. The victims have complained of forced anal, oral sex, forced masturbation by the spouse on themselves or others, genital mutation and even solicitation by the spouse. Also, in some cases, the victims were forced to watch and enact pornographic content, and touch and expose their genitals in an unreasonable way.³

Sexual control and forced pregnancy can also lead to sexual abuse to the women. It can include forced pregnancy, refusing to take contraception, forcing abortion on women, sterilising the woman's private parts etc can be considered as violation of Article 21 of the Indian Constitution which guarantees the Fundamental Right to life and personal liberty. In **Suchitra Srivastava & Anr vs Chandigarh Administration**⁴, the Supreme Court held that a woman has a right to make reproductive choices which can include the option to procreate or refuse to procreate; as it includes her bodily integrity, privacy and integrity and it has been enshrined in Article 21.

Sexual abuse is also linked with domestic violence as abuse is often linked with physical cruelty in the form of harm or injuries; verbal abuse which might include abuses, demeaning sentences, and humiliation faced by the spouses; and economic control. Sexual humiliation by mocking spouse's body; shaming sexual preferences and performance; and using sex as punishment or control will also constitute sexual abuse.

As per a study conducted by researchers, it has been observed that almost up to 56% of the females have been a victim of intimate sexual violence of different forms. 1.8% of the females have reported sexual violence during pregnancy.⁵ The fact remains that sexual violence in

³ <https://journals.plos.org/globalpublichealth/article?id=10.1371/journal.pgph.0000601> last accessed on 23-01-2026 at 11:25 AM

⁴ AIR 2010 SUPREME COURT 235

⁵ <https://pmc.ncbi.nlm.nih.gov/articles/PMC10021972/> last accessed on 18-12-2025 at 08:50 AM

marriages is not reported by maximum women because of the reason that there is social stigma in the society regarding the concept of “marital rape/ sexual violence”.

There are majorly three different types of Marital Rape namely: Force only, Battering and Sadistic Rape. Force only Rape means that the husband (aggressor) threatens the wife (victim) of violence to have intercourse. When the verbal abuse is already present in the marriage, force only Rape also becomes prevalent. Battering Rape means that physical violence is combined with sexual intercourse. Sadistic Rape is one wherein the aggressor uses too much violence during the intercourse. Women are usually treated as property of husbands in which they believe that they can own and do anything with them. Generally, women who are weak, ill, pregnant and vulnerable in nature become the victims of such kind of violent acts during sexual intercourse.

Some people justify marital rape as they see it as a private matter between married parties; they think that the relationship of a husband and wife is such wherein sexual violence is to be accepted because of cultural and social beliefs; and because there has been a misrepresentation of the religious meaning of the term marriage and its consequences.

Legal Framework of Sexual Abuse in India

The legal position of “Marital Rape” is contradictory in the Indian legal framework. The term “marital rape” does not find a place in the Indian Criminal Justice system. However, in the J.S. Verma committee report of 2012⁶, it was proposed that marital rape should also be criminalised. The committee suggested that marital rape ought not to be justified only for the reason that the relationship is that of husband and wife and whether consent existed or not. Moreover, the sentence should not be mitigated because of the reason of relationship. The committee also noted that immunity cannot be granted to the perpetrator based on the notion that a wife is the property of her husband, and consent to sexual activities cannot be given irrevocably.⁷ But in 2015, when a Member of Parliament proposed a bill with respect to the same, it was reiterated by Ministry of Home Affairs through a press release that the concept of marital rape cannot be suited in the Indian context.

⁶ JUSTICE J.S. VERMA COMMITTEE, Report of Committee on Amendments to Criminal Law (January 23, 2013)

⁷ *ibid*

Section 3 of Domestic Violence Act, 2005 defines “domestic violence” in a very broad manner. The section lays down that any commission or omission or conduct of the respondent that is physical, mental, sexual, verbal and economic in nature will be constituted as domestic violence on the women coming within the purview of this Act. In Explanation I of Section 3 the term “sexual abuse” is defined as- “any conduct of sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman”. This was the first time when the term “sexual abuse” would mean to include abuse caused to the wives in a marriage. The remedies given under the Act include protection orders, residence orders, monetary compensation, custody orders and other necessary orders to the aggrieved person. The Act not only includes the wives, but also other women living in a domestic relationship of any kind with a male.

The Indian Penal Code, 1860 does not contain any provisions for sexual abuse in marriage explicitly. Section 375 defines “rape” and Section 376 lays down the punishment for the same.

It was after the Mathura Rape Case⁸, that an amendment was brought forth in the year 1983⁹ which laid down that in a conjugal union too, if a wife is below the age of 15 years, then it will be considered as “Rape”.

The definition was expanded in Criminal Law (Amendment) Act, 2013. Section 375 contained a provision which provided punishment for committing rape on his wife if she is below the age of 15 years. In *Independent Thought vs. Union of India*¹⁰, an issue was raised in the Supreme Court i.e. whether Exception 2 attached with Section 375 of Indian Penal Code is constitutional or not. This provision was in conflict with Prohibition of Child Marriage Act, 2006 and POCSO, 2012. It was ruled out by Supreme Court that this provision will now be read as- “sexual intercourse with wife, if the wife is below 18 years of age will be considered as Rape. Exception 2 of Section 375 stated that a wife is between the age of 15-18 years, then it will not be considered as rape. In 2013 Amendment Act, Section 376B was added, and it was laid down that non-consensual sexual intercourse between the spouses during judicial separation will also be punishable with imprisonment for 2 to 7 years and a fine. In such a case, the marital bond still exists, however non-consensual sexual intercourse becomes a punishable offence as the parties are living separately through a court’s decree or otherwise. It acted as an exception to

⁸ *Tukaram v. State of Maharashtra*, (1979) 1 S.C.R. 810

⁹ Criminal Law (Amendment) Act, 1983

¹⁰ (2017) 10 SCC 800: AIR 2017 SC 4904

the marital rape.

Section 63 of Bhartiya Nyaya Sanhita, 2023 lays down Exception 1, as per which- “a man is said to commit rape, if he has sexual intercourse with his own wife, who is under eighteen years of age”.¹¹ This section has clarified that non-consensual sexual intercourse will not be punishable in a marital relationship. Moreover, under Section 67, a man can be punished for committing rape of his wife if they are living in Judicial Separation, irrespective of the fact, whether they obtained the decree of separation or not. In *Harvinder Kaur vs. Harmander Singh*¹², the Supreme Court held that the Court cannot interfere in household matters as it will destroy the sanctity of marriage. In another case, the Chhattisgarh High Court bench has opined that the husband cannot be punished for marital rape even if he is guilty of having unnatural or forced sexual intercourse with his wife, as the law is silent on the same.¹³

However, the number of cases which are reported in relation to sexual violence is quite low in India. The major reasons for non-reporting of such cases could be: limited autonomy given to the females in the society, lack of awareness, stigma attached to such actions in the society, fear of the consequences on the female and her children, treating of women as chattels in most of the households, victimization of women by medical personnels, and lack of legal framework and protection provided to the victims. Sexual violence impacts the victim in a such a negative way that they do not seek help, and some factors such as age, status of the family, financial independence, decision making power of the victim and support from family and peers also play a major role in lodging a complaint against the perpetrator.¹⁴

Physical Impact of Sexual Violence

Women who suffer from sexual violence have a very negative impact on their overall physical health. Women suffer from extreme pain during intercourse, vaginal bleeding and pain, leaking of urine, miscarriages, stillbirth, abdominal pain, dysuria and dyspareunia, reproductive tract infections, unsafe delivery of child, dysmenorrhoea, unwanted pregnancies due to lower contraceptive use, injuries on other parts of body etc. In a few cases, it has been observed that

¹¹ https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf last accessed on 16-12-2025 at 12:50 AM

¹² AIR 1984 Delhi 66, ILR 1984 Delhi 546, 1984 RLR 187

¹³ <https://www.bbc.com/news/world-asia-india-58358795> last accessed on 28-01-2026

¹⁴ Hayes BE, Franklin CA. Community effects on women's help-seeking behaviour for intimate partner violence in India: gender disparity, feminist theory, and empowerment. *Int J Comp Appl Crim Justice*. 2017;41(1-2):79-94.

the women suffer from STD's and reproductive tract infections. In case where the wives have refused to submit themselves to their husbands, they have been victims of violence in many forms such as infliction of injuries on body, burning the body parts of the female and otherwise. If the sexual violence continues during pregnancy, it might lead to complications, poor antenatal care and higher maternal risks. Ultimately, it will impact the physical and mental health of the child.¹⁵ In some cases, the husbands have forcefully got the child aborted which has also impacted the health of women. Women and children experience nutritional deficiencies and infant mortality rates. Victims are often subjected to substance abuse and tobacco which also adversely affects the physical health of women. The victims use these substances as coping mechanism. In a study¹⁶, it was also observed that the pregnant women who suffer from sexual violence suffer from chronic stress and limited autonomy which ultimately leads to poor maternal nutritional which ultimately affects the child in womb.

Psychological and Emotional Impact

There are numerous psychological implications for women's mental health arising from marital rape. These include,

- Depression
- GAD (Generalised Anxiety Disorder)
- PTSD (Post Traumatic Stress Disorder)
- C-PTSD (Complex Post Traumatic Disorder)
- Borderline Personality Disorder
- Substance Abuse
- Eating Disorders
- Self-injury
- Isolation
- Suicide
- Stockholm Syndrome

¹⁵ <https://india.unfpa.org/sites/default/files/pub-pdf/ViolenceReport-25-11-10.pdf> last accessed on 21-01-2026

¹⁶ *ibid*

Sexual harassment within marriage is linked with psychological and emotional impact on the victims. Continuous violation of body can lead to depression and anxiety. The psychological impact of marital rape is PTSD¹⁷, Major depression, sleep disorders like insomnia and increased suicidal tendencies. PTSD is likely to develop more in case of traumatic event where the victims believe they are safe. Such victims start assuming that they are worthless and have no security in their homes anymore.¹⁸ In some cases, it was observed that the wives start finding excuses for their husband's irrational behaviour and believe that it is better to submit themselves to the husbands in order to prevent any conflicts in marriage.¹⁹ PTSD leads to fear, anxiety, frequent nightmares, impulsive reactions, rage, retaliation, disorientation, inattention, sexual disorders, hopelessness self-blaming, and hyper alertness.²⁰

Many times, women are unable to communicate their feelings and suffering to anyone as the fear of judgment is always there. This in turn, has an adverse effect on the mental health of the females.

In a study conducted by researcher²¹, it was observed that battered women see rapid changes in women's behaviour which negatively impacts their social, work and academic life and leads to poor bonding between her and family members and friends.

Traumatized women have higher prediction for anger and depression. They suffer from low self-esteem and body dysmorphic disorder as well as sexual dysfunction. It has also been observed that women who suffer from sexual violence also suffer from poor quality of life, lost interest in life and day to day activities. In many situations, marital rape and violence also undermines children's health and well-being, both through psychological impact of witnessing violence and also undermines the mental health of the mother who becomes incapable of taking care of the children. Inter-generational transmission reinforces the cycles of violence amongst the children who witness violence on a regular basis and accept this as normal behaviour.²²

Sometimes, victims tend to internalise the verbal abuse from their partners and blame

¹⁷ Post traumatic stress disorder

¹⁸ Goodman, et al., 1993

¹⁹ <https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1117&context=themis> last accessed on 21-01-2026 at 4:34 PM

²⁰ <file:///C:/Users/91987/Downloads/Beyond-the-Marital-Bed.pdf> last accessed on 23-01-2024 at 5:00 PM

²¹ <https://india.unfpa.org/sites/default/files/pub-pdf/ViolenceReport-25-11-10.pdf> last accessed on 21-01-2026

²² <http://journals.plos.org/globalpublichealth/article?id=10.1371/journal.pgph.0000601> last accessed on 20-01-2026 at 11:13 AM

themselves for their situation and resort to substance abuse, self-injury, isolation, and in extreme cases, suicide.

Continuous and repeated events of abuse cause the victims to develop depression, anxiety, C-PTSD, Borderline Personality Disorder, and a number of other self-destructive disorders.

Stockholm Syndrome

Some victims develop Stockholm Syndrome wherein their psychological response to the abuse is to empathise with, grow attached to, and even show affection to their abusive partner. Stockholm syndrome is not a sign of weakness, rather, it is a complex coping mechanism used by the mind to protect itself and deal with a terrifying situation.

First, extreme fear and anxiety take over. The victims feel powerless and dependent on the abusive partner. They stop resisting and become alert to their partner's mood. They try to humanise and empathise with them to make sense of the situation.

Now, small acts of kindness from the partner seems significant. They feel relief and gratitude when the partner is not violent. An emotional bond is formed and the victims feel a deep confusion as to whether the abusive partner is actually bad.

The victims now start justifying the actions of the partner and denying the abuse. This stops a large number of abused spouses from reaching out and continue staying in the abusive relationships. They defend the actions of the partner and refuse any help or rescue.

These psychological disorders affect the victim's existing relationships and prevent any healthy future relationships.

Social Impact

The social impact of sexual violence on the wife is also a matter of concern. The social impact of sexual violence within marriage is deep and long lasting. It damages the identity and self-esteem of the victim. Marital rape victims usually face difficulty in developing heterosexual relationship and other interpersonal relationships too. In some cases, it has been observed that the victims isolate themselves, erratically disappear themselves from their immediate family and relatives and have forced themselves to lose their jobs. Financial dependency and lack of

support systems also affect the victim in a negative way. Moreover, the victims begin to have trust issues within the family which leads to isolation in the long run. Survivors who speak out face social exclusion and character assassination and there is pressure on the victims to reconcile with the husbands.

Sexual Violence within Marriage: Ground of Divorce

Sexual violence within marriage is not a direct ground of divorce under the personal laws in the country. However, under Hindu Marriage Act 1955²³, Special Marriage Act, 1954²⁴, Parsi marriage and Divorce Act, 1862; Indian Christian Marriage Act, 1872 and Dissolution of Muslim Marriage Act, 1939; cruelty in physical or mental form is a ground of divorce. In *Bhagat vs. Bhagat*²⁵, it was held that the cruelty should of such kind that it becomes impossible for the parties to live together and continue with marriage. In *Ashwini Kumar Sehgal vs. Swatantar Sehgal*, it was made clear that even a single act of physical cruelty can constitute as a ground of divorce.

In a judgment given by Kerala High Court²⁶, it was held that marital rape can become a ground of divorce. The Bench held that “insatiable urge for wealth and sex of a spouse would also amount to cruelty”...In this case, the appellant was accused of having sexual intercourse with the wife even during her pregnancy, also when she was bedridden and sick. The victim was also subjected to unnatural intercourse by her husband, and she was also forced to have sexual intercourse in front of daughter. The bench²⁷ opined that this can constitute physical and mental cruelty, and divorce can be granted to the parties on this basis. In *Nimeshbhai Bharatbhai Desai vs. State of Gujarat*²⁸, the Gujarat High Court held that the husband cannot treat the wife as chattel and it violates her dignity. But it was also noted that if marital rape is to be treated as a separate ground of divorce, the laws will be required to be changed. For instance, Section 9 of Hindu Marriage Act, 1955 implies that the husband cannot be deprived of sexual intercourse by the wife. The concept of restitution conjugal of Rights has been given under this section which will be in conflict with the concept of marital rape.

²³ Section 13(1) (ia) of Hindu Marriage Act, 1955

²⁴ Sec. 27 (d) of the Special Marriage Act, 1954

²⁵ (1994) 1 SCC 337

²⁶ <https://www.scconline.com/blog/post/2021/08/10/marital-rape/> last accessed on 28-01-2026 at 11:12 AM

²⁷ Division Bench comprising of A. Muhamed Mustaque and Kauser Edappagath, JJ

²⁸ 2018 SCC Online Guj 732

Conclusion

Sexual harassment within marriage remains one of the most devastating forms of intimate partner violence. Though it is being treated as an invisible concept in our country, but the fact remains that it intensifies the psychological trauma by denying victims recognition and validation. Sexual violence within marriage is not punishable in India as it is associated with some legal challenges. Firstly, it would be difficult to differentiate between consensual and non-consensual sexual acts in a marriage. Marriage usually covers the concept of legal intercourse between husband and wife, and it might destroy the very essence of marriage as laid down in personal laws of various religions. Moreover, reporting of false cases to take revenge from the party to the marriage might also create an issue for the judiciary. Marital rape has been made illegal in more than 100 countries till date, and with a proper legal framework, it can be made a punishable offence in India too. The UN has urged that marital rape should be penalised by the countries across the world by closing all the legal loopholes. It has clearly laid down that the home is the most dangerous place for a woman till the time marital rape does not become criminalised. The Indian government has opined that criminalizing marital rape can be excessively harsh for the husbands even when a survey has cleared that 1 in 25 married women face sexual violence at their homes.

The arguments in favour of criminalizing the sexual violence against the spouses are: (i) there is a clear violation of autonomy of the victim as there should be a right to refuse for marital intercourse. (ii) Article 14, 15 and 21 of the Indian Constitution stands violated for the victims as their right to equality, right to live with dignity is being infringed.

The arguments against criminalisation of sexual violence against spouses include: (i) There is a chance of destabilization of marriages in the country if this provision is inserted in the criminal law. (ii) Existing laws in the country cover remedies for sexual violence against women. (iii) Introduction of such a law might attract false accusations and misuse of provisions. (iv) The legislature must decide upon the matter keeping in mind the effects of passing such law.

The most effective way to combat sexual violence within marriage is to provide legal awareness through campaigns on consent and sexual violence amongst the females, Strengthening the law enforcement and support system in India to punish the perpetrators and provide assistance to victims, conducting educational programs targeting young people about

gender equality and consent. Reforms should be made in the Bhartiya Nyaya Sanhita, 2023 and Domestic Violence Act, 2005 to protect the spouses from unnatural and forced intercourse in the marital relationship. The provision for compensation, rehabilitation, counselling and restraining orders must be included in the laws for the victims. The immunity in the marital relationship must be removed so that the victims can have protection from such perpetrators. The marriageable age for women must be raised from 18 years to 21 years so that the abuse can be curtailed to a significant level. Moreover, it will also improve the overall maternal health of the females. It can help in reducing gender gaps in the society and also reduce the risk of non-consensual sexual intercourse between the husband and wife. The legislators can take the laws related to marital rape in other countries such as UK, USA, Canada etc in consideration to frame proper laws that align with the global human rights. While legislating on such matters, it is necessary to include provisions to prevent the misuse of such law by the spouses to settle scores against each other.