
RAPE IS RAPE: ADDRESSING MARITAL RAPE IN INDIA'S LEGAL FRAMEWORK

Sneha Raj, Chanakya National Law University

ABSTRACT

The manuscript raises the important issue of marital rape in India, where cultural and judicial barriers ensure its impunity. Even though marital rape is banned in more than 100 countries, it continues to be a grey area in India, where there existed the outdated notion of irrevocable consent and patriarchal beliefs in society. The paper critiques historical legal doctrines by Sir Matthew Hale and William Blackstone, which have nourished the marital rape exemption. It critically investigates the inadequacies of current laws, such as Section 375 of the Indian Penal Code and the Protection of Women from Domestic Violence Act, which fail to protect married women from sexual violence. The manuscript calls for immediate legal and cultural change so that marital rape can be recognized as a crime, thereby emphasizing consent as a facet of all sexual relations. The work seeks to help the debate on gender equality and women's rights in India for the recognition of women's autonomy and rights and calls for active legal measures to uphold the dignity and bodily integrity of married women.

INTRODUCTION

India is known for its diverse culture and rich heritage, which have been overshadowed by its patriarchal norms and male-oriented society, where women are oppressed and considered as property of their husbands due to various practices, one of which is sati is one of them where women set on fire on his husband funeral, and these practices had been practiced for many years on the name of tradition and culture. However, while these evil practices have been abolished over time, women are still treated like the property of their husbands in modern times, and one of the main practices through which this oppression is maintained is marital rape.

Marital rape has been criminalized in over 100 countries but yet in the nation where over 100 languages flourish, all emphasizing the vital principle 'no means no' an unnerving exception persists permitting marital rape to remain unpunished. This glaring inconsistency reflects how women are still considered as property of their husbands and reveals the inconsistency of individual rights in marriage.

The word 'rape' comes from the Latin term '*Rapio*,' which translates to 'to seize.'" Rape is described as a sexual act performed on a woman without her consent, using violence, force, deceit, or coercion. It's not just a physical attack; it fundamentally goes against the core of a woman.

Frequently, rape is seen as something done by a stranger or a malicious person, and it is seldom seen in the context of marriage. This misunderstanding stems from the belief that marriage implies a woman's consent. Society frequently expects the wife to fulfill her husband's marital responsibilities, including sexual intimacy. As a result, the concept of consent is often overlooked in favor of the belief that simply being married implies consent, even if the woman has not given explicit agreement. This notion usually ends up exemplifying women as husband's property.

Addressing marital rape in India necessitates both thorough legal reforms to criminalize the act and a significant cultural change in society's perception of women's autonomy and consent. Laws must be established promptly that clearly outline and criminalize marital rape, along with implementing consequences for perpetrators. It is crucial to understand that consent does not come with marriage, it must be given voluntarily and honored.

HISTORY OF MARITAL RAPE

In the 17th century, British jurist Sir Matthew Hale laid the groundwork for the marital rape exemption with a highly influential, yet baseless, claim: *"But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract."*¹ Hale's statement, though lacking legal support, established the idea that a wife's consent to her husband was irrevocable once married, shaping legal doctrines for years to come. The foundation for this exception to the law on marital rape lies in Hale's view of marriage as a contract, and by this, is meant that the woman has given undoubted consent to sex for the rest of her life. This has given rise to the misapprehension that husbands have a so-called "marital right" to sex. Those in opposition to this view of implied consent further allege that this is incompatible with other areas of the law that concern consent and that is where consent does not apply to voluntary infliction of grievous bodily harm. In addition, the married couple's contract view which includes marriage is untenable; it is vague and cannot be enforced because the contract has no particulars and is usually unknown to the parties themselves. In the end, the very notion of a man's right to sexual compliance, backed by the threat of violence, runs contrary to the very tenets of consent and personal liberty.

Another notion that the husband owned his wife as chattel had further solidified the foundation for the marital rape exemption. *"Since a husband could not take what he already owned, a husband was no more capable of raping his wife than an owner was of stealing his own property"*². There was a view of women as 'owned' which led to the common law definition of rape not as a crime directed against women but rather as an infringement of man's proprietary interest. There existed laws designed to safeguard a husband's proprietary interest in his wife's loyalty. However, this notion of women as property is backed by deeply entrenched patriarchal and exemplifying gender stereotypes and that has been strongly rejected in our contemporary legal system.

The final common law rationale for the marital rape exemption was the belief that, upon marriage, a wife's identity merged with that of her husband. In 1765, William Blackstone stated, *"By marriage, the husband and wife are one person in law; that is, the very being or legal*

¹ SIR MATTHEW HALE, *THE HISTORY OF THE PLEAS OF THE CROWN* 629 (Emlin ed. 1736).

² Charlotte L. Mitra, "...For She Has No Right or Power to Refuse Her Consent", 1979 *CRIM. L. REV.* 558, 560.

existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs everything."³ This concept came to be known as the marital unities doctrine, which asserts that a woman could not own property, make contracts, or engage in litigation, which backed the notion that it is legally impossible for a husband to rape his wife, as it seems impossible because a man could not rape himself.

However, in the 19th century, Blackstone's unity theory started to lose its relevance as women got recognition as legal personhood via the Married Women's Property Act, and this brought a significant transition/shift from the unities' doctrine to the separate sphere's doctrine. Although women are now recognized as active participants in all areas of society, remnants of the marital unities and separate spheres doctrines linger in arguments that continue to justify the marital rape exemption. Despite their historical foundation, these outdated justifications have lost legitimacy in the modern legal landscape, where women are presumed to be equal under the law.

WHY EXISTING LAWS ARE INSUFFICIENT

Rape is often characterized as an act of power rather than a mere consequence of uncontrollable desire; it is, indeed, a petrifying violation of one's autonomy and dignity. Legally, rape is defined as non-consensual sexual intercourse and is classified as a grave offense. Yet, in the context of marriage, Indian law remains entrenched in the outdated notion of irrevocable consent, effectively excluding marital rape from the scope of criminal law.

Section 375⁴ The Indian Penal Code (IPC), 1860; defines rape as an act of non-consensual intercourse by a man against a woman. "But Exception 2 of this section state that Sexual intercourse or sexual acts by a man with his wife, the wife not being under fifteen years of age, is not rape". This exception roots itself in the traditional belief that marriage implies irrevocable consent, effectively leaving married women unprotected by the law against forced intercourse by their husbands. Despite amendments and increased recognition of women's rights, this marital exemption remains a contentious and unresolved issue in India's legal system. Such an exception originates from the customary view that marriage equals absolute consent, hence married women do not enjoy protection from laws against their husbands' sexual violence.

³ 1 William Blackstone, *Commentaries on the Laws of England* 421 (Oxford, Clarendon Press 1765-1769).

⁴ Indian Penal Code, § 375, No. 45 of 1860, India Code (1860).

Even with amendments added in and recognition of women's rights heightened, marital defense still exists and is a debatable two-faced issue in the Indian legal system.

The Criminal Law Amendment Act of 2013 was enacted in response to the shocking 2012 Nirbhaya incident, whereby the act redefined what constituted rape, not just limiting it to vaginal penetration by a male. However, the law maintained the provision of marital rape exemption, even after the Justice Verma Committee had suggested the need to criminalize marital rape. They further explained that marriage should never be taken as a guarantee of permanent consent and called for respect for the rights of all married women including their bodily integrity. Still, this recommendation was not implemented by the Indian authorities due to the existing cultural dynamics and the adverse effects it would have on marriage.

The Protection of Women from Domestic Violence Act (PWDVA), 2005⁵, encompasses various forms of violence against women including sexual violence, and violence occurring within the home. However, it fails to criminalize marital rape which is considered a negative aspect as it allows only civil remedies such as protection orders or monetary relief. Such a provision does not act as a deterrent and supports the notion of 'implied consent' leaving many married women at risk. Although Victims of marital violence may seek legal recourse through existing laws. They can pursue charges under Section 354 of the IPC, which addresses sexual assault short of rape, providing legal recourse for victims experiencing unwanted physical contact of a sexual nature. Additionally, Section 498A deals with cruelty by a husband or his relatives, specifically in the context of domestic violence, offering protection to women from harassment and abuse in marital relationships. However, these measures often fall short of addressing the root issue: the lack of criminal recognition of marital rape itself.

In a significant judgment of the Supreme Court of India, the case of *Independent Thought v. Union of India* (2017)⁶. Ruth Bader Ginsburg, recognizing the possibility of marital rape of minors, encountered with Exception 2 in respect of a wife aged 15 to 18 years. The court held that no woman, irrespective of marital status, should be subjected to sexual exploitation. Nevertheless, this modest advancement is restricted to those below the age of sexual consent, while adult women remain confined within the walls of marital immunity.

Additional incidents further illustrate the difficulties around the issue of marital rape for the

⁵ The Protection of Women from Domestic Violence Act, No. 43 of 2005, India Code (2005).

⁶ *Independent Thought v. Union of India*, (2017) 10 SCC 800; AIR 2017 SC 4904.

judiciary. Thus, in the case of *Nimeshbhai Bharatbhai Desai v. State of Gujarat* (2018)⁷, the Gujarat High Court concluded that the concept of consent for married women and wives in particular, who are also entitled to individuality is rejected. The court pointed out that in any normal marriage, there must be a section of the husband and wife, who are romantically entwined and consented to each other for the physical relationship, both aroused and sexually active, which cannot be accepted in vague assumptions of things, of marriage, where there is no cessation of sexual intercourse automatically and it is on the existence of consent by both of them. However, there remains little legislation on the issues of marital rape and its exceptions, with such demands being considered inappropriate for the courts, with most of them directed to Parliament only.

The judicial system has proved to disregard marital violence e.g. marital rape in most situations as being situational A matter 'between the two actors'. The Delhi High Court in *Harvinder Kaur v. Harmander Singh*⁸ Held that marital Intimacy was beyond the reach of the Constitution. Yet there are differing opinions for example, in *State of Maharashtra v. Madhukar Narayan Mardikar*.⁹ Where it is held that women are not dependent on their husbands and retain the right to their own privacy and bodily integrity. Similar sentiments were echoed by the Supreme Court in *Shri Bodhisattwa Gautam v. Subhra Chakraborty*.¹⁰, wherein the court held that rape constitutes a violation of Article 21 of the Constitution because it is an assault on a person's right to life and dignity.

In *Anuja Kapur v. Union of India* (2019)¹¹ Recently, the Supreme Court was moved into a 'Public Interest Litigation' (PIL), requesting the government to formulate laws about marital rape. The court, however, did not entertain the request by maintaining that it was the duty of the Parliament to legislate on that issue. This position shows that while the courts have moved to recognize women's rights, the development in law has been slow due to the unwillingness of the 'lawmakers' to radically change societal practices.

Marital rape is still not a criminal offense in most nations – the case with India. There has been increased advocacy on this and such international pressure on the government; however, there are no tangible measures taken to uphold the rights of married women by the state. In 2016,

⁷ *Nimeshbhai Bharat Bhai Desai v. State of Gujarat*, (2018) Guj 732.

⁸ *Harvinder Kaur v. Harmander Singh*, AIR 1984 Del 66; ILR 1984 Del 546; 1984 RLR 187.

⁹ *State of Maharashtra & Anr. v. Madhukar Narayan Mardikar*, AIR 1991 SC 207; (1991) 1 SCC 57.

¹⁰ *Shri Bodhisattwa Gautam v. Ms. Subhra Chakraborty*, AIR 1996 922; (1996) 1 SCC 490.

¹¹ *Anuja Kapur v. Union of India*, 2019 SCC OnLine Del 12339 (Del. 2019).

Maneka Gandhi, then the Minister for Women and Child Development said that it would not be easy to couch marital rape in legal terms, given the country's backwardness and societal issues implying that the notion may not be fit for the Indian society. However, this notion has been mostly reproached for disregarding women's sense of self and the respect that they should command.

The truth, however, is somewhat polar: while there exists a legal scheme in India that seeks to protect individuals from sexual violence, women who are married find their avenues to seek redress severely curtailed. The bulwark of permanent consent that the legal system has maintained up to now denies them access to justice and is out of sync with the contemporary understanding of personal autonomy. There is a pressing need to change, as making the practice of marital rape illegal would entail that marriage does not permit one to give a single consent and be provided with the right to inhabit all other relationships without interruption.

Recognition of marital rape in law would be a significant milestone in ensuring that every person irrespective of his or her marital status is entitled to say no to unsolicited sexual activity. The change will be also necessary if one hopes that the legal system in India will recognize the human rights of married women and the principle of gender equality. For the time being, however, until such changes occur, the battle for justice and recognition of most women's rights takes place within the institution of marriage.

ADDRESSING CONCERNS IN CRIMINALIZING MARITAL RAPE

The argument that marital rape should not be considered a crime is based on the realism that non-consent is a very difficult assertion to prove in a marriage. Objections to this view argue that it just creates an additional burden for the victim, who is expected to show the absence of consent for an easily justifiable few instances, during all of which their partner would have previously consented. Such a stance negates the very essence of an individual's right to control their body, even in marriages.

One may presume, for example, in many marriages, it is with only third parties who either witness or photograph the act that it would be possible to show that there was no consent. However, the case law shows that evidence can be understood in a wider sense. For instance, in the legal case of *State Vs Mr. Gopal Ram*¹², the Honourable Court stated, "*To Appraise the*

¹² *State v. Mr. Ram Gopal*, 52004 (Rohini Courts, Delhi, Jan. 25, 2017).

authenticity of the claims made by the prosecution, it is necessary to consider all the relevant facts". The court thus reminded that 'this slight change in the facts of the case should not discredit the entire case of the prosecution; instead, it is evidentiary of the existence of that truth.' This also applies in marriages, especially with concerns about penetration that allow the production of other forms of evidence like medical documents, evidence of psychological trauma, and the accounts of non-parties to the marriage.

Wherein, the justification that there are ways of establishing that there has been shortsightedness is not a basis for exclusion. As several writers have pointed out, the "difficulty of proof has never been a proper criterion for deciding what behavior should be officially censured by society."¹³ Even those offenses that carry a great deal of proof, such as treason or incest, are still crimes. Many legal systems acknowledge that simply because certain offenses are difficult to prove does not mean that serious offenses should not be prohibited.

Legal acknowledgment of marital rape would additionally play a role in deterrence by putting proper boundaries and punishing offenders for transgressions thereby reducing such acts. It provides a key understanding that violence in marriage is even sexual violence and it is wrong. This alteration in the law would help in propagating the belief that "there is no sex without consent" to women irrespective of their marital status.

The fear that resorting to making false allegations will result in spousal protection has not been established. The argument that "in our criminal justice system, there is a procedure put in place to ascertain the veracity of the allegations made" addresses the primary intention of ensuring that there are no false allegations made. In addition, courts control and restrict the type of evidence presented and the standards of evidence required in proving different offenses including those perpetrated within the family. If restrictions on the criminalization of certain behaviors were based on the apprehension of false claims, then many other crimes apart from homicide would not have been prosecuted.

Moreover, women are already free to register claims for other crimes like assaults, among others. In that case, if the objective were simply to damage the husband's reputation, those claims would already prevail. Courts have even mentioned that "the battery, which one spouse can now sue the other for has not been applied for that purpose," indicating that fears of using

¹³ David Finkelhor & Kersti Yllo, *License to Rape* 1 (1985).

such provisions may not be consistent with reality. Yet in a matter of sexual abuse consent is a legal grey area but the assumption effectively strips women of agency they feel that saying no is taboo and the result is that 90% who often experience sexual violence in marriage often don't seek help because they don't recognize it as the crime they see as a husband right.

However, in this regard too, it is a dangerous practice as fear of abuse of a particular law does not justify its repeal. This principle too was upheld by the Apex Court in the case of *Sushil Kumar Sharma v. Union of India*.¹⁴ Which dealt with the concept of 'lawful terrorism'. "As the adage goes, if cries of "wolf" are made too often as a prank, assistance and protection may not be available when the actual "wolf" appears." In a related case, the Madhya Pradesh High Court also held in the case of *XYZ (Confidential) v. State of Madhya Pradesh Police Station*¹⁵ The wife's lack of consent for sexual intercourse is irrelevant in a case where the husband was accused of having unnatural sex with his wife without her consent. This is disturbing as the issue is placed on 'unnatural sex' instead of 'sex against will'.

In *Rajaram v. The State of Madhya Pradesh*,¹⁶ The Apex Court acquitted the accused appealing the "cumulative effect" of the evidence and even the two dying declarations of the wives. The Court observed that the High Court had wrongfully discarded the only evidence that was presented regarding the appellant. This is important because it points to the fact that a similar trend should be encouraged in the heresy principles of marriage to avoid circumvention of justice and most importantly for victims to get the justice they seek.

Finally, the deep social stigma attached to the act of rape often prevents victims from coming forth to report incidents. Taking into account the consequences of rape reporting on individuals and society, it is highly improbable that a woman would claim to have been raped as an act of vengeance, given that it is much more public and difficult than other offenses. Therefore, although fear of wrongful accusations is often mentioned, it cannot be an adequate reason for not offering any kind of legal protection to the victims of marital rape.

By individual rights as well as justice, the authorities ought to ensure that marriage does not provide a defense to charges of rape but that protective measures against the risk of false

¹⁴ *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281 (India).

¹⁵ *XYZ (Confidential) v. State of Madhya Pradesh Police Station*, Criminal Appeal No. 1184 of 2022, SLP (Crl) No. 1674 of 2022 (India).

¹⁶ *Rajaram v. State of Madhya Pradesh*, (2022) CRIMINAL APPEAL NO. 2311 OF 2022 (@ SPECIAL LEAVE PETITION (CRL.) NO. 6762 of 2022) (India).

accusations are put in place.

The sentiment of the public on this issue has garnered significant attention. Violence against women has been a longstanding affliction throughout history and according to the WHO¹⁷ Estimates almost 30% of women globally at least once in their lives have suffered physical and/or sexual violence from an intimate partner or non-partner. The majority of this violence is in the form of intimate partner violence whereby, nearly one out of three (27%) women aged 15-49 who have ever been in a relationship, reported having experienced any form of physical and/or sexual violence by their current or former spouse/partner. Furthermore, the National Family Health Survey (NFHS-5)¹⁸ Indicates that 1 in 25 women in India is a victim of sexual violence, including marital rape. For a nation with a population of more than one billion, these figures put the number of women being physically abused by their husbands at approximately 26 million. Still, the state appears determined to maintain the sanctity of marriage, arguing that criminalization of marital rape will disturb this institution. If that is the case, then what exactly does the law seek to criminalize? These shocking statistics highlight the urgent need to criminalize marital rape and challenge the patriarchal norms and traditional beliefs that have long justified this treacherous and heinous act.

CONSTITUTIONAL CHALLENGES OF MARITAL RAPE

The Constitution of any nation is the document that embodies the spirit of that nation. “The Indian Constitution organizes and controls power, ensures human rights, balances the competing claims of social and individual interests, mirrors the cultures and experiences of the country, and operates as a vehicle for national progress and unity.”¹⁹ Hence it will be considered how the marital rape exemption doctrine does not align with Article 14 Article 21 and other constitutional provisions laid down in the Constitution of India.

Every citizen of this nation is provided with an equality right as enshrined in Article 14²⁰ of the Constitution. The importance of extending this vision is that, in a society, a person’s social category will not be used to justify disadvantageous differential treatment, while persons in

¹⁷ World Health Organization, “Violence Against Women,” (Oct. 2021), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

¹⁸ Ministry of Health and Family Welfare, National Family Health Survey (NFHS-5) (2019-21), available at [https://mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf].

¹⁹ Sudhanshu Roy & Iti Jain, Criminalizing Marital Rape in India: A Constitutional Perspective, *Criminal Law Journal*, Apr. 2008, at 81-92.

²⁰ Constitution of India 1950, art. 14.

different social categories will not be expected to receive the same treatment. The Supreme Court²¹ has ruled that valid grounds for such classification shall be based on an intelligible differentia that distinguishes those who are grouped from others and which has a reasonable relation to the objectives of the statute. Therefore, it is settled law that any classification made by a statute, that is not necessary or relevant for the purpose it is made, is unconstitutional. Over time, the understanding of the term reasonable classification may change, since the Constitution is a living instrument.

Hence, it is of great necessity to combat gender stereotyping which may cause discriminatory treatment. Gender-based violence is catered for by the assumption that women in marriages lose their rights upon marriage and consent to any sexual overtures by their husbands during the marriage. It entrenches the belief of marriage as a right and entitlement for a man whereby the women give perpetual consent to her husband for sex. This view bench warrants that it is wrong to rape or sexually abuse a married woman in public, however, it limits her agency with a leash and puts her under a dome of protection from such acts in her domestic sphere.

The effectiveness of the law regarding the exclusion of marital rape termination from punishment operates based on an unjust allocation of categories adversely affecting dignity and other basic human rights. In opposing marriage feminization, the difference in treatment given to people according to their marital status not only strengthens the atmosphere of discrimination against women but also goes against the foundations of equality and justice promoted by Article 14.

Additionally, Under the Indian Constitution, Article 21²² protects the right to life and personal liberty, which has undergone a great deal of development since the preceptive case of *Maneka Gandhi v. Union of India*. This development includes almost everything under the right to life and does not just exclude the existence of an individual. As Field J. in *Munn v. Illinois*²³ opined, life is 'more than mere animal existence' which was also agreed with by the Court in *Bandhua Mukti Morcha v. Union of India*.²⁴ These changing dynamics of law stand in stark contrast with the marital exception to rape which violates several rights under Article 21, especially the rights to, bodily self-determination, privacy, and health. Although the right to privacy is not

²¹ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75, 80.

²² Constitution of India 1950, art. 21.

²³ *Munn v. Illinois*, 94 U.S. 113 (1877).

²⁴ *Bandhua Mukti Morcha v. Union of India*, A.I.R. 1984 S.C. 802, 811.

mentioned anywhere in the Constitution, it has been held, thanks to a series of judgments, that it forms an essential ingredient of personal liberty under Article 21. Engaging forcibly in sexual intercourse, especially within a marriage context, constitutes a blatant violation of a woman's right to privacy when she is forced to enter into sexual relations against her will. In *State of Maharashtra v. Madhkar Narayan*,²⁵ the Supreme Court reiterated the need for such a right, declaring that every woman possesses sexual privacy which no one should be allowed to breach indiscriminately. In the same way, the right to live with dignity without any fear or disturbance, which is inherent in the right to life, demands that one makes decisions concerning his body and relationships. The apex court has unfailingly asserted that rape is an infraction not only of an individual's right to life, but grossly interferes with their dignity, and this has been demonstrated in several cases which did not regard rape as a mere act against an individual but as a societal concern. Therefore, the marital rape exemption which permits a husband to have non-consensual sex with his wife, is an affront to the constitutional principles enshrined in these provisions and therefore, is unconstitutional and violates the women's right to live with dignity.

The Impact of Marital Rape

“Violence against women – particularly intimate partner violence and sexual violence – is a major public health problem and a violation of women's human rights.”²⁶ Marital Rape is one of the forms of partner violence which carries social, psychological, and health consequences to women, children, and society at large. Such violence may take different forms; physical, sexual, and psychological, and cause both short- and long-term serious health problems.

There are extreme consequences of intimate partner violence which include homicide or suicide. There is a significant percentage of physical injuries that women are likely to sustain. Statistically, it is shown that 42 percent of women experiencing IPV report an injury. And the risks go far beyond injury to health consequences in the future. Women who have experienced any physical or sexual abuse are 1.5 times more likely to become infected with some sexually transmitted infections (STIs) including HIV than women who have not suffered abuse. They are also more than two times more likely to seek termination of pregnancies showing the effect

²⁵ *State of Maharashtra v. Madhkar Narayan*, A.I.R. 1991 S.C. 207.

²⁶ World Health Organization, “Violence Against Women,” (Oct. 2021), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

of abuse on reproductive health.

When it comes to violence against women, pregnancy is not a protective factor as it poses more danger to their health with increased chances of complications such as miscarriage, stillbirth, preterm labor, and low birth weight infants. Studies demonstrate that intimate abuse of women raises the risk of miscarriages among them by 16% and preterm births by 41%. The psychological impacts can be equally damaging as those who would have endured such acts tend to be more prone to depression, anxiety disorders, post-traumatic stress, and even attempts of suicide. One participant in the WHO study (2013) found that women who experienced violence were almost twice as likely to be depressed and to drink alcohol at problem levels. Furthermore, survivors may report the presence of chronic conditions such as pain, headaches, and problems in the stomach which can greatly reduce their quality of life.

Marital rape has great ramifications on the mind and psychological trauma can cause a change in behavior in an individual reaching extreme levels of increased smoking, drug abuse, and indulging in unprotected sex among other reckless sexual behaviors. In the case of men, such aggressive behavior expressed to others is likely adopted when the individual is exposed to violence as a child. However, women in such scenarios are likely to become victims of such aggression.

The risk of emotional and behavioral issues for children living in households with intimate partner violence is elevated. The impact of this exposure on the child is severe, with research associating violence exposure with increased infant and child mortality, morbidity, and prolonged psychological or behavioral problems. Therapy may further be required if the children start developing chronic illnesses as well as other impairments. Such children may also develop problems which may hinder them from relating with others well as well as affecting their growing up stages.

The effects of such implicating violence within partners are not only emotional but also have considerable social and economic implications. These may include forced social exclusion, unlikeliness to hold a job, and loss of income and community engagement. Such a situation limits her ability to take care of herself thereby worsening issues of provision of basic needs for her children that is poverty and violence.

SUGGESTIONS

To responsibly contain such alarming rates of marital rape in India, it is of paramount importance to harness a systematic approach and deal with different aspects of this issue. One of the foremost areas of concern is encouraging awareness among women about their right to consent or deny any kind of marital force. Just like most women remember the right to abstain from physical relations, they do not remember that not being subjected to forced sexual intercourse in marriage is also a right violation, educational programs need to be devised that make such women realize the existence of law and avenues available. Hence the knowledge of which situations are abusive and how to handle them will help women when such events occur.

Besides, women's economic empowerment is equally important. The state should focus on the education of the girl child and launch schemes for her family to earn money whether in skilled occupations or unskilled. Economic autonomy makes it easier for women to leave an abuser. If women can fend for themselves, leaving an abusive relationship is easier and even the pursuit of justice for the wrongs done to them is achieved when necessary.

Effective solutions to marital rape also include making the act a crime. Asserting that marital rape is a punishable offense under the Indian legal system in the *Bhartiya Nyaya Sahitya* and also eliminating it from the exceptions found in Exception 2 of Section 63 would ensure that the legal system acknowledges the seriousness of the crime and punishes the offenders. Reforms of the law are of most importance in the protection of women's rights and women's access to justice.

It is equally important to advocate for a comprehensive approach toward sex education to bring about appreciation and conversations about consent and sexual rights. In several regions in India, sex is a taboo topic that makes it hard for advocacy against sexual violence especially by women. By embedding sex education into the schools' curricula and the public discourse, it becomes possible for individuals to internalize their rights to consent and why it is important, thus elevating the fears surrounding these discussions.

Changing societal beliefs and cultural attitudes is another element that is of great importance in the fight against marital rape. These notions of women being 'owned' and men suffering the risk of losing 'their' property simply due to the absence of matrimony need to be addressed.

This is because such campaigns and programs would assist in changing people's perceptions regarding marriage and consent; where the concept of sexual relations without fulfilling them is only a delusion.

In addition, law enforcement agencies should be taught how to deal with the sensitive matters of marital rape. Police officers should be trained about the relevant areas of law and the practical strategies for dealing with complaints of domestic violence, as well as how one talk about sexual violence in a non-sexist manner. It is important to make police departments answerable for inaction in such cases and also make them engage a higher percentage of female personnel in the management of domestic violence and rape cases.

Healthcare providers also have a critical function to play when it comes to marital rape. They should be capacitated to screen for sexual violence among patients routinely and even look for signs of physical and sexual violence especially in delicate moments like pregnancy. In this way, health workers help the victims of sexual abuse not only in rehabilitation but also in fighting for justice, when necessary, by providing medical evidence where appropriate.

Last but not least, religious leaders and advisors can also help build support systems for victims of marital rape. For instance, when helping women tell their stories about what happened to them, religious leaders can assist women in defining their trauma as "rape," rather than allowing for damaging narratives that blame the survivors and absolve the aggressor. Such an approach will create a society where victims are supported and offenders are punished for their acts.

CONCLUSION

The concern of marital rape in India is undoubtedly a human rights issue that has always been concealed in the veil of cultural respect for marriages. It has found no legal recognition and is seeking to be silenced by society's defense mechanisms, which has left its many victims, silent. "Marital rape, as observed by the Supreme Court of India, is a 'deathless shame and the gravest crime against humanity'. It is time for the law to finally understand the fact that 'Rape is Rape irrespective of the relationship of the victim and the perpetrator'."

Despite the most pervasive problem of marital aggression namely marital rape, hence political settings have had and still have relatively few social scientists, practitioners, and the criminal

justice system, and this leaves a multitude of victims in the iron cage of marriage. The tolerance of violence in intimate relationships only serves to reinforce dangerous beliefs and cultural narratives that objectify and subjugate women, maintaining a system of patriarchy that seeks to control women's autonomy and agency.

It is equally obvious that marital rape should not be construed as requiring any legal considerations due to the undeniable obligation that upholds and preserves the dignity and rights of women. It must be appreciated that sex, forced or otherwise, cannot be equally defined regardless of the relationship spouse, a family member, or a complete outsider, and in whichever places, be it home, outside, or work. There is no denying the fact that not criminalizing marital rape protects the institution of marriage only as a façade.

Instead, society needs to increase promotion, education, and most importantly, support the restructuring of the existing legal frameworks to help in the reduction of the stigma associated with marital rape. It is fundamental to empower the voices of the survivors, affording them a chance to reassert their existence. In the fight for justice and equality, it should always be recognized that all forms of sexual violence constitute crimes, no matter the circumstances or conditions in which they occur. Therefore, the time has come to center the conversation on those who have been affected by marital rape, for it is quite evident that the yawning gap between the law and the lived experiences of the people is unacceptable.

It's high time to acknowledge that forced sex is rape, regardless of who commits it—whether it is a husband, family member, or stranger—and no matter where it occurs, be it in the home, public sphere, remote areas, or at work. Rape is rape, with or without the adjectives you attach to it. Thus, not criminalizing marital rape does not save marriages; it only protects the perpetrator.

BIBLIOGRAPHY

1. Tan Cheng Han, *Marital Rape – Removing the Husband's Legal Immunity*, 31 *Malaya L. Rev.* 112 (1989), available at <https://www.jstor.org/stable/24865602>.
2. *Criminalisation of Marital Rape in India: Understanding Its Constitutional, Cultural and Legal Impact*, 11 *NUJS L. Rev.* 121 (2018), available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/nujslr11&div=8&id=&page=>.
3. *Women's Experiences of Marital Rape and Sexual Violence within Marriage in India: Evidence from Service Records*, *PMC* (2022), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC8967187/>.
4. Mark A. Whatley, *For Better or Worse: The Case of Marital Rape*, 8 *Violence & Victims* 29 (1993), DOI: 10.1891/0886-6708.8.1.29.
5. Sanmati Rathore & Raja Roy Choudhury, *A Bibliometric Analysis of Marital Rape as a Human Right Aspect*, in *Futuristic Trends in Social Sciences*, Vol. 3, 47-59 (2024), available at <https://doi.org/10.58532/V3BJSO1P1CH3>.
6. *Marital Rape Will Striking Down Immunity to Husbands Create New Offence Asks Supreme Court*, *The Indian Express* (May 6, 2024), available at <https://indianexpress.com/article/india/marital-rape-will-striking-down-immunity-to-husbands-create-new-offence-asks-supreme-court-9625989/>.
7. *An Analysis of Marital Rape in India: An Overview*, *Legalonus* (2023), available at <https://legalonus.com/an-analysis-of-marital-rape-in-india-an-overview-in-bns-2023/>.
8. *Outlawing Marital Rape: A Recurrently Validated Crime*, *CLSNLUO* (Aug. 9, 2024), available at <https://clsnluo.com/2024/08/09/outlawing-marital-rape-a-recurrently-validated-crime/comment-page-1/#respond>.
9. *Remedies Against Marital Rape Under BNS, PWDV Act, and Family Law*, *Lawfoyer*, available at <https://lawfoyer.in/remedies-against-marital-rape-under-bns-pwdv-act-and-family-law/>.

10. India: *Madhya Pradesh Marital Rape Ruling*, CNN (May 6, 2024), available at <https://edition.cnn.com/2024/05/06/india/india-madhya-pradesh-marital-rape-ruling-intl-hnk/index.html>.
11. IH Frieze, *Investigating the Causes and Consequences of Marital Rape*, *Signs: J. Women in Culture & Soc'y* (1983), available at <https://journals.uchicago.edu>.
12. Elaine K. Martin, Casey T. Taft & Patricia A. Resick, *A Review of Marital Rape*, 12 *Aggression & Violent Behav.* 329 (2007), available at <https://doi.org/10.1016/j.avb.2006.10.003>.
13. Sonal Garg & Nivedita Singh, *Marital Rape: Historical and Comparative Analysis*, *MyLawman Socio-Legal Rev.* (2022), available at <https://mslr.pubpub.org/pub/vlo7anq8>.
14. Nandini Agarwal, Salma M. Abdalla & Gregory H. Cohen, *Marital Rape and Its Impact on the Mental Health of Women in India: A Systematic Review*, *PLoS Glob. Public Health* (June 21, 2022), available at <https://doi.org/10.1371/journal.pgph.000060>.
15. Saptarshi Mandal, *The Impossibility of Marital Rape: Contestations Around Marriage, Sex, Violence and the Law in Contemporary India*, 29 *Austl. Feminist Stud.* 255 (2014), available at <https://doi.org/10.1080/08164649.2014.958124>.