

## SANCTITY OF MARRIAGE OR IMMUNITY FOR VIOLENCE? A JURISPRUDENTIAL EXAMINATION OF CONJUGAL RAPE IN INDIA

by

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### Abstract

*Rape fundamentally constitutes a breach of the worth of a woman and self-worth, and when perpetrated within the institution of marriage, it dehumanises the woman to a simple instrument of sexual pleasure. India urgently needs to pass a separate legislation that addresses spousal or marital rape and brings it into compliance with accepted international norms. A wife is severely traumatised by the idea of rape in a marriage. Her cognitive, emotional, and mental well-being suffers greatly as a result of her anxiety of having to endure such brutality in quiet. This stillness, though, is not all self-imposed. It is mostly caused by the lack of legal safeguards and the ongoing societal shame surrounding marital rape, which permits this type of assault to continue to go unpunished under the pretence of marital purity. Although the law protects women from outside dangers, it does not protect them when the attacker is their own spouse, whom they married formally and sincerely. Married women are essentially denied the same protection and physical autonomy as others due to this legal difference. It is completely inappropriate in today's culture for a wife to be expected to comply with her spouse's sexual requests irrespective of her will, permission, or health. A contemporary, civilised legal system cannot accommodate the antiquated marital rape exception. Making marital rape a crime is an important first step in changing how sexual violence in marriage is viewed and dealt with, even if it might not totally solve the issue. Whatever the connection among the perpetrator and the victim, the law must acknowledge and uphold the fundamental premise that rape is rape.*

**Keywords:** *Dignity, Self-worth, Bodily autonomy, Consent, Trauma, Emotional well-being, Legal safeguards, Social stigma, International norms.*

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### **What is Marital Rape? An understanding-**

When the word "rape" is used, it usually conjures up the idea of a predatory stranger with malevolent intent. The act is seldom conceived within the parameters of married relationships. Even women frequently struggle with the idea of their spouse may be responsible for such a crime, considering the widespread social perception that a husband's marital rights give man the authority to engage in intercourse with his spouse without getting her consent. A woman's power of her individual libido is viewed as subordinate to her husband's power in the marriage, according to deeply ingrained aristocratic traditions.

Despite being common and extremely damaging in Indian society, marital rape is still hidden because of legal loopholes, social conventions, and cultural silence. generally committed under duress or when the woman is unable to provide her full assent, it can be described as any unlawful sexual relationship by a husband and is generally ignored in public discourse, legislation, and regulations. There is a significant gap in India's legal system's ability to protect women from domestic violence since it still does not consider it a crime.

The Latin term "rapio," which means "to seize," is where the word "rape" originates, indicating that it is an act of violent violation. It is described as an illicit sexual transaction performed under duress, threat, or deceit in both legal and social contexts. It affects a woman's independence, respect, and belief in her self in addition to her physical safety. According to the Indian Constitutional Court, rape is the most serious violation of human dignity and is a cause of "deathless shame," underscoring its profound psychological and existential effects that go beyond simple bodily injury.

However, in the past, the primary factors in the legal processing of rape were not the woman's autonomy or bodily integrity. Rather, it existed inside patriarchal structures where the woman was viewed as a man's property, first her father's and then her husband's. This outdated mindset saw rape less as a personal offence and more as a violation of a man's private rights. Domestic violence within wedlock was long ignored because the law viewed women as the property of their husbands and suggested that a spouse could not commit an offence against what was legally his. This outdated perspective, which denied women agency and bodily rights, prevented marital rape from being acknowledged and punished.

Marital rape raises a number of complex social and legal difficulties. The close-knit and sometimes dependent character of marriages makes it hard for many women to even identify themselves as victims. The strongly rooted belief that sexual submission is a prerequisite for

marriage makes this difficulty much more difficult. Due in large part to strong obstacles including financial reliance, social shame, and fear of financial collapse, conjugal rape remains one of the most overlooked types of violence against women. The possible repercussions, particularly for kids and their financial security, frequently cause survivors to remain silent rather than pursue justice, even in cases when abuse is acknowledged.

Over the years, India has put in place legislation protections for women against domestic violence, such as the Protection of Women from Domestic Violence Act (2005) and Section 498A of the Indian Penal Code, which address concerns including dowry harassment, cruelty, and abuse. However, one of the most severe abuses a woman may endure in a marriage—forced sexual acts by a husband under the guise of marital rights—remains unresolved. Despite being a grave violation of autonomy and consent, marital rape is still not illegal in India. This suggests that women have very little social and legal protection.

In addition to vaginal rape, women who are sexually assaulted by their husbands typically endure this abuse on a regular basis, frequently involving forced oral and anal intercourse. These actions are often performed under coercive conditions, such as while the lady is asleep, or with the use of physical force, threats, weapons, or psychological pressure. One severe and pervasive kind of gender-based violence that affects millions of women globally is marital rape. Because of systematic underreporting, it is still difficult to accurately quantify marital rape. This hesitation stems from a number of intricate reasons, such as financial and emotional reliance, fear of reprisals, worry for the welfare of children, social disapproval, and—most importantly—the lack of legal remedies or official acceptance of rape in marriage as a crime<sup>2</sup>. Due to family constraints or false beliefs about marital responsibilities, many women internalise the violence, which further reduces the crime's appearance.

Victims of marital rape often go unspoken and have no legal protection, and they suffer greatly on a physical, psychological, and emotional level. Data from countries where marital rape is recognised show the alarming extent of the issue. For instance, studies show that within one in seven to eight married women in the United States have experienced rape or attempted rape at the hands of their spouse. This highlights the vital need for legal recognition and assistance systems in countries like India, where the abuse is not reported to the authorities. Between 10%

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<sup>2</sup> N. D. v. State of U.P., 2006 (1) AWC 422.

and 14% of married women report experiencing sexual assault in their marriage, according more extensive statistical studies<sup>3</sup>.

The fact that the attacker is frequently someone the victim formerly trusted, loved, and thought of as a life partner makes marital rape more pernicious. The trauma is more complicated and long-lasting than in situations involving individuals who are familiar because of this breach of intimacy and trust, which turns the attack into a serious act of betrayal.

### **Indian Laws pertaining to the term “Rape”-**

Despite India's significant progress in other areas, notably legal overhaul and development, the justice system for the nation still fails to recognise marital rape as a chargeable offence. Despite several legislation modifications, law commission recommendations, and mounting international pressure to conform to international human rights norms, this conspicuous absence still exists. Due to outdated legal ideas and judicial hesitation, non-consensual sex within marriage—one of the most humiliating and traumatic crimes a woman can experience—remains immune from criminal punishment.

A thorough examination of the legal options available to women in the context of marriage reveals a concerning fact: legislative processes are either non-existent or ambiguously expressed, leaving the issue of fair up to the interpretation of the courts. The colonial mindset that viewed wives as their husbands' property is the source of India's laws against marital rape. Even now, marital rape is not covered under section 375 of the IPC unless the victim is younger than 15, disregarding a woman's right to agree in a marriage and depriving many survivors of justice or legal protection.

If the person who suffered was the perpetrator's wife and not less than twelve, the maximum punishment is just two years in jail, a fine, or both<sup>4</sup>. Even more worrisome is the statute's intrinsic contradiction: women are protected from marital rape until the age of 15, even though they are legally permitted to marry at 18. This incongruity not only compromises the coherence of the legislation but also violates the spirit of the global human rights accords which India has signed onto. The criminal code recognises the potential of sexual assault between spouses, but it does not apply this acknowledgement to the overwhelming majority of married partnerships.

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<sup>3</sup> Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.

<sup>4</sup> IPC,1860

This is evident in the 1983 restricted modification that made conjugal assault illegal only during periods of judicial separation.

Marital rape is not considered a crime under the present Indian Penal Code (IPC) legislative framework, with the exception of certain, strictly defined situations. Husbands are still completely excluded from the legislation, unless certain requirements related to age or marital status are satisfied. The following are the main exclusions from prosecution that apply to husbands who engage in non-consensual sexual actions with their wives<sup>5</sup>:

- Wife between the ages of 12 and 15: According to Section 376 of the IPC, it is illegal for a husband to have sex with a wife between the ages of 12 and 15 without getting her permission. This crime carries a maximum two-year jail sentence, a fine, or both.
- Wife under 12: The offence is handled more severely in this situation. The penalty includes a fine and a minimum sentence of seven years to life in prison or a period of up to 10 years.
- Judicially separated wife: According to the 1983 amendment, having sex with a legally split wife without getting her permission is illegal and carries a maximum two-year jail sentence as well as a fine.
- When a wife is 15 years of age or older and not legally separated, the husband's sexual behaviour is not considered rape under the Indian Penal Code (IPC), which permits non-consensual sex within the bounds of marriage.

An important step forward was the PWD Act of 2005, which recognised non-consensual sexual actions by a husband as a kind of domestic violence. It permits women to pursue civil remedies such as protection orders, residency rights, and financial support, even if it does not make marital rape a crime. However, it does not carry the same criminal penalties as rape under Section 375 IPC, which leaves survivors of marital sexual assault with a significant justice gap.

A legal reluctance to undermine patriarchal ideas that view marriage as irreversible permission to sex and a persistent reluctance to recognise a wife's physical autonomy as sacrosanct are reflected in this disjointed and conflicting legal approach. Comprehensive change is not only required by law, but also by morality and the constitution.

It offers, at most, legal remedies such as residence relief, protection orders, and judicial separation. But they are only Band-Aid solutions that don't deal with the fundamental problem,

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<sup>5</sup> Indian Penal Code, 1860, Section 375.

which is that husbands who engage in non-consensual sexual activity are not held criminally responsible<sup>6</sup>.

Along with to being a breach of bodily liberty, marital rape results in a significant loss of emotional trust and psychological safety. It strips a woman of her physical and emotional self-respect, transforming marriage from a partnership based on mutual respect to one of coercion and subjugation. Despite many changes, particularly in the area of sexual offences, the Indian Penal Code (IPC) still retains archaic remnants of patriarchal assumptions and Victorian-era morality. This is especially true of Section 375's exemption clause, which shields spouses from prosecution for marital rape.

The presumption of irreversible consent, which holds that a woman has irrevocably agreed to all types of sexual interaction with her husband once she consents to marriage, is the foundation of the current legal standard. This line of thinking ignores the difference between sexual assault and consenting sex<sup>7</sup>. A fundamental tenet of both worldwide human rights law and criminal jurisprudence is that permission has to be functioning, continuous, and revocable. It is ethically and legally unacceptable to assume that submission brought on by fear is equivalent to consent. Consent is not given when someone submits under stress, compulsion, or threat. This complex understanding must be reflected in the penal code, especially in married relationships when women can cooperate to prevent violence, financial desertion, or social rejection.

There is also a compelling need to modify the definition of rape under Section 375 IPC. The existing definition is restrictive and antiquated, barring oral sex, anal penetration, or the use of foreign objects—acts that are plainly constituted rape in many modern nations. This limited definition has been regularly attacked by local and international human rights organizations, especially women's advocacy groups.

Consent is essential to personal freedom. Yet, married women in India struggle to assert control over their own bodies. Without legal recognition of marital rape, they rely on Section 498A (cruelty), which lacks clear standards for judging harmful sexual behaviour. Courts have no consistent way to define what counts as abusive or unnatural in marriage—leaving many women without real protection.

### **Perspectives from the 42nd Report on Marital Rape**

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<sup>6</sup> Ibid

<sup>7</sup> Nanda v. State of Maharashtra, 2018 SCC Online Bom 1685.

The Law Commission of India advocated in its 42nd Report to omit marital rape from Article 375 IPC, noting that it should not even be properly referred to as "rape" and that it should be covered by a distinct provision. The Ministry of Women and Child Development's Task Force for Women and Children called for further public discussion in spite of persistent requests from The Law Commission of India, in its 42nd Report, recommended removing the marital rape exception from Section 375 IPC, arguing that it should not even be called "rape" and instead be addressed under a separate provision. Meanwhile, the Ministry of Women and Child Development's Task Force acknowledged demands from women's groups and the National Commission for Women to criminalize marital rape—but stopped short of supporting it. While the Task Force backed a broader definition of sexual assault, it did not endorse including marital rape under criminal law, calling instead for more public discussion on the issue.<sup>8</sup>

### **The 172nd Law Commission Report: Forward-thinking Suggestions Regarding Sexual Offences**

Significant vagaries to the legislation affecting to rape were suggested in 172nd Report, which was issued in March 2000. In accordance with *Sakshi v. UOI*, some of the main proposals were to change the stint "rape" to "erotic battering," expand its description to encompass all sorts of permeation, together with vaginal and with objects, and recognise assault on any area of the body as sexual assault. The Commission recommended adding a new offence called "unlawful sexual conduct" under Section 376E, changing Section 509 IPC to stiffen penalties for acts done with sexual intent, and promoting gender-neutral legislation to address custodial sexual abuse of boys.

Crucially, the study advocated for the repeal of Section 376A and the removal of Explanation 2 of Section 375 IPC, suggests that a partner's forced carnal relations should be considered similarly to other types of assault. Additionally, it suggested that in cases where the victim refuses permission, the Indian Evidence Act would presume non-consent. Legislative action is still delayed in spite of these progressive recommendations.

### **The Indian Constitution and Rape Conjugal Exclusion**

A nation's structure is the article that captures the core of the country. The Indian Composition reflects the nation's traditions and experiences, arranges and adjust authority, guards human rights, forays a stability between inconsistent demands of society and isolated attentions, and

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<sup>8</sup> National Commission for women report 2013

attends as a reagent for the development and union of the nation<sup>9</sup>. According to the Indian Constitution, all laws made in the nation must be consistent with the values and principles stated therein. Any legislation that do not adhere to this criterion is considered ultra vires and might be overturned by the courts and ruled unconstitutional. It shall now be examined how the philosophy of matrimonial resistance from rape does not adhere to the requirements of Articles 14 and 21 of the Indian Constitution<sup>10</sup>.

Article 14- Alike shield under the regulation and fairness before the law are certain under Article 14 of the Indian Constitution. It does, however, allow for fair categorisation as long as it is grounded in comprehensible differentia and has a logical connection to the law's goal. This constitutional requirement is broken by any classification that is capricious, unrelated, or based on antiquated preconceptions. In addition to making rape illegal, Section 375 of the IPC protects a female's self-sufficiency over her body and her liberty to make her own choices. Its exclusion clause, however, excludes a husband's non-consensual intercourse from the definition of rape, leading to a discriminatory classification based only on marital status. This makes the irrational and unlawful assumption that married women are not entitled to state protection from domestic sexual abuse. In addition to depriving married women of their personal liberty, the law perpetuates patriarchal presumptions by denying them the same protections as single women. Such a categorisation violates Article 14 as it does not pass the standards of logical connection and comprehensible differentia.

The fundamental right to life and freedom of movement is guaranteed by Article 21 of the Indian Constitution, and courts have construed this to include autonomy, privacy, dignity, and a meaningful quality of life. This right is violated by the marital rape exception under Section 375 IPC, which exposes women to coerced sexual actions within marriage and denies them autonomy over their own bodies. It deprives them of their privacy, dignity, and mental health—all essential components of Article 21. The statute violates constitutional principles by classifying conjugal rape differently, depriving married women of the same protections against sexual abuse as others.<sup>11</sup>.

### **The right to privacy in sexual relations<sup>12</sup>**

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<sup>9</sup> UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Recommendation No. 19, 1992.

<sup>10</sup> Constitution of India

<sup>11</sup> Battered Women's Syndrome and Criminal Law, (1995) 37 Indian Journal of Legal Studies 225.

<sup>12</sup> Mohan Singh v. State of Punjab, 2008 (4) RCR (Criminal) 124.

Hough Although the right to privacy is not specifically mentioned in the Indian Constitution, the Supreme Court has long acknowledged it as an essential component of Article 21, which safeguards individual liberty and life. This involves a woman's right to live with dignity and autonomy, particularly in regards to her most intimate experiences, and to make decisions regarding her own body.

That right is violated by forced sex, whether it occurs within or outside of marriage. No one has the right to infringe on a woman's sexual privacy, the court said in *State of MH v. Madukar Narayan*. In a similar vein, the Vishaka Guidelines confirmed that safety and dignity are fundamental human rights as well as workplace rights. Why should consent be limited to a marriage's bedroom if it is important everywhere else? Even with her husband, a woman should be able to say yes or no without fear. She is denied that option since marital rape is not recognised, leaving her vulnerable to abuse behind closed doors without any meaningful legal protection or punishment.

### **The right to self-determination of the body**

The accurate to corporal sovereignty is implied in Article 21's shield of life cycle and private authorisation, although not being expressly mentioned in the Constitution. It reaffirms that people have the last say in decisions pertaining to their bodies, particularly private ones like sexual consent. Personal freedom and self-expression depend heavily on this autonomy. The marital rape exception is unlawful because it denies a married woman the ability to refuse or withdraw permission, which is a essential constitutional precise.

### **The right to health<sup>13</sup>**

The right to good health, which is necessary for one's bodily, mental, and emotional well-being, is also covered by Article 21. By subjecting women to psychological anguish, emotional suffering, and possible bodily harm—including the possibility of contracting an STD—the marital rape exception violates this right. Women's emotional and physical health are at risk due to this legal blind spot, which makes the exception not only unfair but also unlawful. The marital rape exemption not only defies the many rights under Article 21 and the idea of categorisation under Article 14, but it also falls short of being "just, fair, and reasonable." According to Articles 14 and 21, the highest court in the nation has often held that any

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<sup>13</sup> Parliamentary Standing Committee Report on Amendments to the IPC, 2013.

legislation impacting basic rights must be reasonable, just, and fair. The marital rape exception violates the higher bar of reasonableness needed by Article 21 even if it somehow passes the categorisation test under Article 14.

Claiming that this exemption adheres to "the process defined by law" is legally contradictory, since such procedures need to be reasonable and equitable rather than capricious or unfair. Legal technicalities that shield marital rape disregard fundamental rights, equal approval, and fairness principles, rendering the legislation not only out of date but also illegal in spirit. The Supreme Court has upheld the need that any denial of life or liberty follow this fairness and reasonableness criteria, which the married exception blatantly disregards.

### **Jurisdictive Stance-**

In the context of marital partnerships, the jurisprudence on a husband causing his wife substantial damage demonstrates a concerning trend of the judiciary's disinclination to acknowledge conjugal rape as a delinquency that may be prosecuted. An outdated perspective where the law of rape was not applied to men in marriages as long as the wife was older than 15 is highlighted by the legal history, especially the *Queen Empress v. Haree Mythee* (1890) case. The judges in this instance chose to focus on the criminal culpability under Section 338 IPC for causing grievous damage rather than categorising the act as rape, despite the fact that the wife's life was in risk because of the serious bodily injuries she sustained during sexual activity. The case illustrates a judicial mindset that downplayed the gravity of marital sexual assault and subordinated the wife's physical liberty to her husband's desires. *Emperor v. Shahu Mehrab* (1940), in which the courts rejected the gratitude of marital rape but found the husband guilty of causing his young wife's death through reckless sexual behaviour, emphasised a similar contrast between the recognition of marital violence when it causes death or serious harm and its dismissal when it involves the violation of sexual autonomy<sup>14</sup>.

In *Shretha v. T. Venkata S* (1983), the AP HC, acknowledged that the sanctity of each individual's bodily autonomy must be protected against governmental intervention in the marriage bond. The right to privacy was extended to the marital realm after it was determined that the enforcement of court rulings pertaining to connubial rights violated the inviolability of

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<sup>14</sup> P. V. Indira v. State of Andhra Pradesh, 2009 (5) ALD 529.

an discrete's body and mind<sup>15</sup>. The assumption that married couples must have sex was slightly questioned in this instance by claiming that marital privacy shouldn't be abused in this way. The basic tenet is that marital consent shouldn't be a legal fiction, particularly when it comes to the right to bodily integrity.

In *Shree Kumar v. Pearl Karun* (1994), the Kerala HC, further cemented the patriarchal worldview by ruling that a marital covenant is irreversible, even under duress. The court rejected to apply the concept of rape within marriage, in line with the broader judicial and social notion that consent to sexual interactions is automatically granted in marriage. Because the marriage was seen as an implied consent for sexual behaviour, the husband was cleared of rape charges even though he confessed to non-consensual sexual encounters. This bolsters the notion that the judicial system, which typically sees the marriage bond as an exception to the basic principles of consent and physical autonomy, effectively disregards married women's constitutional rights<sup>16</sup>.

These court decisions fundamentally demonstrate a structural incapacity to reconcile the evolving constitutional ideas of individual rights, autonomy, and privacy with the traditional understanding of marriage. As a result, the continued legal indifference to marital rape not only interrupts women's essential rights but also reinforces discriminatory and patriarchal practices that deprive them of their bodily integrity and autonomy.

### **Conclusion-**

The perception of a wife as the companion's assets is maintained by the ongoing exclusion of nuptial rape is lawless, depriving her of her sexual agency. Marital rape has not received enough attention, despite the fact that women's organisations have been effective in increasing awareness of domestic abuse. Marital rape will continue to go unpunished unless civilization and policymakers acknowledge women's separate rights within marriage<sup>17</sup>.

Conjugal rape is not familiar as a crime against a female's body and dignity in India due to cultural beliefs based on gender, shame, and family honour. These cultural presumptions may be challenged by embracing an individual rights framework, as is the case in Western nations.

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<sup>15</sup> *Anuja Gupta v. State of Maharashtra*, 2017 SCC Online Bom 386.

<sup>16</sup> Justice Verma Committee Report, 2013

<sup>17</sup> UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Recommendation No. 19, 1992.

Because of the continual proximity to the attacker, conjugal rape is more disturbing than stranger rape and has serious physical and mental repercussions for women, frequently leading to long-term trauma. It is apparent that criminalising conjugal rape is urgently needed. Although the PWD Act offers some fortification, it does not specifically discourse the same, indicating the need for further laws.

To defend women's rights to their bodies in marriage, the state must expand its current role of intervening in issues like cruelty, divorce, and dowries. Fighting patriarchal conventions that treat women like property requires acknowledging their dignity and liberation from marital rape. The law must give her the respect and independence she is due and shield her from such horrible abuses<sup>18</sup>.



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<sup>18</sup> International Covenant on Civil and Political Rights (ICCPR), Article 7.