



## Marital Rape in India

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This article is based on **“The impunity of marital rape”** which was published in The Indian Express on 18/12/2020. It talks about the issues related to marital rapes in India.

Domestic violence in India is an entrenched problem, and it has only been exacerbated in recent years. According to the **National Crime Records Bureau’s (NCRB) ‘Crime in India’ 2019** report, about 70% of women in India are victims of domestic violence.

One such manifestation of this domestic violence is Marital rape. Marital rape, the act of forcing your spouse into having sex without proper consent, is an unjust yet not uncommon way to degrade and disempower women.

Today, Marital rape has been impeached in more than 100 countries but, unfortunately, India is one of the only 36 countries where marital rape is still not criminalized.

Even though many legal amendments have been done in criminal law for the protection of the women, the non-criminalization of marital rape in India undermines the dignity and human rights of women.

### Status of Marital Rape in India

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- The definition of rape codified in Section 375 of the Indian Penal Code (IPC) includes all forms of sexual assault involving non-consensual intercourse with a woman.
- Non-Criminalization of marital rape in India emanates from **Exception 2 to Section 375**.
- However, **Exception 2 to Section 375** exempts unwilling sexual intercourse between a husband and a wife over fifteen years of age from Section 375’s definition of “rape” and thus immunizes such acts from prosecution.
- As per current law, a wife is presumed to deliver perpetual consent to have sex with her husband after entering into marital relations.

- The concept of marital rape in India is the epitome of what we call an “implied consent”. Marriage between a man and a woman here implies that both have consented to sexual intercourse and it cannot be otherwise.

## **Marital Rape: Against Legal & Constitutional Rights**

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- **Doctrine of Coverture:** Non-Criminalised nature of Marital rape emanates from the British era. The Marital rape largely influenced by and derived from this doctrine of merging the woman’s identity with that of her husband.
  - At the time the IPC was drafted in the 1860s, a married woman was not considered an independent legal entity.
  - The marital exception to the IPC’s definition of rape was drafted on the basis of Victorian patriarchal norms that did not recognize men and women as equals, did not allow married women to own property, and merged the identities of husband and wife under the “**Doctrine of Coverture.**”
- **Violative of Article 14:** Marital rape violates the right to equality enshrined in Article 14 of the Indian constitution.
  - The Exception creates two classes of women based on their marital status and immunizes actions perpetrated by men against their wives.
  - In doing so, the Exception makes possible the victimization of married women for no reason other than their marital status while protecting unmarried women from those same acts.
- **Defeats the Spirit of Section 375 of IPC:** The purpose of Section 375 of IPC is to protect women and punish those who engage in the inhumane activity of rape.
  - However, exempting husbands from punishment is entirely contradictory to that objective, as the consequences of rape are the same whether a woman is married or unmarried.
  - Moreover, married women may actually find it more difficult to escape abusive conditions at home because they are legally and financially tied to their husbands.

- **Violative of Article 21:** According to creative interpretation by the Supreme Court, rights enshrined in **Article 21** include the rights to health, privacy, dignity, safe living conditions, and safe environment, among others
  - In the **State of Karnataka v. Krishnappa**, the Supreme Court held that sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female.
    - In the same judgment, it held that non-consensual sexual intercourse amounts to physical and sexual violence.
  - In **the Suchita Srivastava v. Chandigarh Administration**, the Supreme Court equated the right to make choices related to sexual activity with rights to personal liberty, privacy, dignity, and bodily integrity under Article 21 of the Constitution.
  - In **Justice K.S. Puttuswamy (Retd.) v. Union of India**, the Supreme Court recognized the right to privacy as a fundamental right of all citizens.
    - The right to privacy includes “decisional privacy reflected by an ability to make intimate decisions primarily consisting of one’s sexual or procreative nature and decisions in respect of intimate relations.
  - In all these judgements the Supreme Court has recognized the right to abstain from sexual activity for all women, irrespective of their marital status, as a fundamental right conferred by Article 21 of the Constitution.
  - Therefore, forced sexual cohabitation is a violation of the fundamental right under article 21.

## Way Forward

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- The **United Nations Declaration on the Elimination of Violence against Women** defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”
  - In 2013, the UN Committee on Elimination of Discrimination Against Women (CEDAW) recommended that the Indian government should criminalize marital rape.
- The **JS Verma committee** set up in the aftermath of nationwide protests over the December 16, 2012 gang rape case had also recommended the same.
  - By removing this law, women will be safer from abusive spouses, can receive the help needed to recover from marital rape and can save themselves from domestic violence and sexual abuse.

## Conclusion

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Indian law now affords husbands and wives separate and independent legal identities, and much jurisprudence in the modern era is explicitly concerned with the protection of women.

Therefore, it is high time that the legislature should take cognisance of this legal infirmity and bring marital rape within the purview of rape laws by eliminating Section 375 (Exception 2) of IPC.

## When rape is allowed by law



**More than two-thirds of married women in India, aged 15 to 49, have been beaten, or forced to provide sex, regardless of their socio-economic positions. (As per the UN Population Fund)**

**1 in 5 men has forced his wife or partner to have sex. (As per the International Men and Gender Equality Survey 2011)**

**Over 104 countries across the world have criminalised marital rape.**

**India, Saudi Arabia, Pakistan and China have not.**

### ***Drishti Mains Question***

The non-criminalization of marital rape in India is a dreadful slur on the dignity and human rights of women. Comment.



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This editorial is based on **“HDR 2020: Kill the Earth, it’ll get you”** which was published in The Economic Times on December 18<sup>th</sup>, 2020. Now watch this on our Youtube channel.