



drishti

## Marital Rape: An Indignity to Women

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This article is based on **Marital rape: an indignity to women**, which was published in The Hindu on 31/08/2021. It talks about the issues related to non criminalisation of marital rape and suggest a way forward.

A recent case in Chhattisgarh High Court has reignited the debate about non-criminalisation of marital rape. 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.

### Recent Case

- The High Court of Chhattisgarh recently decided on a criminal revision petition challenging the charges framed against the applicant husband.
- Based on the allegations of his wife, charges were framed by a trial court under Section 376 (rape), Section 377 (carnal intercourse against the order of nature) and Section 498A (cruelty towards wife by husband or his relatives) of the Indian Penal Code (IPC).
- The High Court upheld charges under Sections 498A and 377 but **discharged the husband** under Section 376 on the ground that **by virtue of Exception 2 to Section 375 (the definition of rape), sexual intercourse by a man with his own wife (provided she is over the age of 18) would not amount to the offence of rape.**
- Since the High Court was bound by the law, which exempts husbands from being tried or punished for raping their wives by creating the legal fiction that all sex within marriage is consensual, no other conclusion was open to the Court.

Notwithstanding this, the discrepancies and failings of Indian criminal law, highlighted by the judgment, deserve scrutiny.

### Issues With Marital Rape Exception

- **Inconsistent Provision:** A husband may be tried for offences such as sexual harassment, molestation, voyeurism, and forcible disrobing in the same way as any other man.
  - Moreover, husband separated from his wife may even be tried for rape (**Section 376B**).
  - However, the marital rape exception is inconsistent with other sexual offences.
- **Patriarchal Beliefs:** The marital rape exception is an **insult to the constitutional goals** of individual autonomy, dignity and of gender equality enshrined in fundamental rights such as **Article 21 (the right to life)** and **Article 14 (the right to equality)**.
  - In **Joseph Shine v. Union of India (2018)**, the Supreme Court held that the offence of adultery was unconstitutional because it was founded on the principle that a woman is her husband's property after marriage.
  - The marital rape exception betrays a similar patriarchal belief: that upon marriage, a wife's right to personal and sexual autonomy, bodily integrity and human dignity are surrendered.
- **Destroy the Institution of Marriage:** A commonly cited rationale even by the government for preserving the marital rape exemption is that recognising marital rape as a criminal offence would '**destroy the institution of marriage**'.
- **Doctrine of Coverture:** Non-Criminalised nature of Marital rape emanates from the British era. The Marital rape is 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.**"
- **Against International Obligation:** Antithetical to the liberal and progressive values of our Constitution, and violative of India's international obligations under instruments such as the Convention on the **Elimination of All Forms of Discrimination against Women**, the provision underlines women's subordination to men, especially within marriage.
  - In 2017, the Supreme Court had read down the exception so that husbands who raped their minor wives could no longer hide behind it.
  - It is high time adult women are afforded the same protection and dignity in marriage.

## Impacts of Marital Rape on Women

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- **Mental health impacts** associated with marital rape and other forms of abuse by partners include **depression, anxiety, emotional distress and suicidal thoughts**.

- Marital rape and violence also **undermine children’s health and well-being**, both through the **psychological impacts** of witnessing violence and because it can undermine the ability of mothers to care for themselves and their children.
- Marital rape victims are more likely than stranger and acquaintance rape victims to experience multiple rape incidents. Marital rape victims suffer long-lasting physical injuries that are as severe or more severe than victims of stranger rape experience.
- Victims of marital rape may remain in the marriage for a variety of reasons. These include: fear of more violence, loss of financial security, a low sense of self-worth, and false hope that their partner will change.

## Way Forward

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- **Not Against Institution of Marriage:** The government defended exception to marital rape in **Independent Thought v. Union of India (2017)** saying it against the institution of marriage.
  - However, rejecting this claim, the Supreme Court observed, **“Marriage is not institutional but personal – nothing can destroy the ‘institution’ of marriage except a statute that makes marriage illegal and punishable.”**
  - In this context, marital rape can be taken out of the exception.
- **Criminalise the Marital Rape:** 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.
- **Justice Verma Committee Report:** The **JS Verma committee** set up in the aftermath of nationwide protests over the December 16, 2012 gang rape case had also recommended the criminalisation of the marital rape.
 

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.
- **Women’s Rights Awareness Programme:** Awareness campaign based in Kenya can provide shelter, counselling, practical and legal advice and other services to survivors of gender-based violence.
 

Educational and prevention programs on local, state, and national levels can be initiated for spreading awareness.

## 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 marital rape exception to the definition of rape is antithetical to women's dignity, equality and autonomy. Discuss.

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