



## Marital Rape in India

**For Prelims:** [High Court \(HC\)](#), [Supreme Court \(SC\)](#), [BNS](#), [Section 377](#), [Domestic Violence Act, 2005](#), [Articles 14 \(equality\)](#), [15 \(non-discrimination\)](#), and [21 \(right to life and dignity\)](#), [POCSO Act, 2012](#).

**For Mains:** Legal and judicial status of marital rape in India. Debate over criminalising marital rape.

[Source: BS](#)

### Why in News?

In the *Gorakhnath Sharma vs State of Chhattisgarh Case, 2019*, the [Chhattisgarh High Court \(HC\)](#) ruled that a husband cannot be charged with [rape](#) or [unnatural sex](#) with his wife if she is **above 15 years of age**, regardless of consent.

- It relied on **Exception 2 under Section 375 of IPC**, which **exempts a husband** from rape charges if the wife is not below 15 years.
- In another development, the [Supreme Court \(SC\)](#) is hearing petitions to **criminalize marital rape**, backed by women's rights activists.

### What is Marital Rape?

- **About:** Marital rape is a type of **intimate partner violence** that involves **forced sex** or sexual assault between spouses. It is not a crime in India.
  - However, if a couple is **married, but living separately**, then the husband is **guilty of rape** if his wife **does not consent** to sexual intercourse.
- **Legal Stance:**
  - **IPC: Section 375 (2)** states that **sexual intercourse or sexual acts** between a man and his wife who is **not under 15 years of age is not rape**.
    - **BNS** retains **immunity** for husbands in cases of marital rape but the **age of consent has been increased from 15 to 18 years** complying with the SC judgement in the *Independent Thought vs Uoi Case, 2017*.
  - **Domestic Violence Act, 2005:** While marital rape is not a crime, a woman can **seek relief** under the [Domestic Violence Act, 2005](#) for **sexual abuse**, humiliation, or **violation of dignity**.
- **Judicial Rulings on Marital Rape:**
  - *Independent Thought vs Uoi Case, 2017:* The SC struck down **Exception 2 to Section 375 IPC (Section 63 of BNS)** for **wives aged 15-18**, making intercourse with **minor wives (under 18) rape**.
    - It ruled the exception **arbitrary and unconstitutional**, violating [Articles 14 \(equality\)](#), [15 \(non-discrimination\)](#), and [21 \(right to life and dignity\)](#).
    - The court ruled that [POCSO Act, 2012](#) **prevails over IPC**, making sex with a minor (under 18) rape, even if she is married.

- **KS Puttaswamy Case, 2017:** It stressed the importance of **sexual autonomy for individuals** as an intrinsic part of privacy.
- **Other Important Rulings:**
  - In 2023, the **Bombay HC** ruled that **consensual sex** with a **minor wife** is **rape**, rejecting the defence of consent in such cases.
  - In 2024, the **Madhya Pradesh HC** ruled that unnatural sex with a wife is **not rape** and that a **wife's consent is irrelevant** in such matters.
- **Judicial Ruling on unnatural sex:**
  - **Navtej Singh Johar Case, 2018:** The SC partially struck down **Section 377 IPC**, decriminalizing **consensual homosexuality**.
- **Government's Stance:** The Ministry of Home affairs told the SC that while a **husband cannot violate his wife's consent**, calling it "rape" is **excessively harsh and disproportionate**.

## What are Arguments For and Against Criminalizing Marital Rape?

For Criminalization	Against Criminalization
<b>Violation of Autonomy:</b> Every individual has the <b>right to refuse sex</b> , even in marriage. The SC in the <b>Navtej Johar case, 2018</b> upheld <b>sexual autonomy</b> and it should extend to marriage.	<b>Threat to Marriage:</b> Criminalization may <b>destabilize marital relationships</b> .
<b>SC Stand: Independent Thought Case, 2017</b> recognized marital rape for minors, <b>reinforcing consent</b> .	<b>Existing Laws Sufficient: Domestic violence laws</b> already provide protection from sexual harassment.
<b>Equality Before Law:</b> Exempting husbands <b>violates</b> constitutional rights ( <b>Articles 14, 15, 21</b> ).	<b>Potential Misuse:</b> May lead to <b>false accusations</b> in divorce and custody cases.
<b>POCSO &amp; Child Protection:</b> Non-consensual sex is a <b>crime for minors; should apply to married adults</b> .	<b>Social &amp; Cultural Norms:</b> Marriage <b>traditionally includes sexual relations</b> , making legal change complex.
<b>Legal Contradictions:</b> BNS <b>retains immunity</b> for husbands despite removing Section 377.	<b>Legislative Domain:</b> The government argues that the <b>legislature, not courts</b> , should decide.

## Criminalisation of Marital Rape Around the World

- Marital rape is **explicitly criminalized in 77 countries**, allowed **cases** against spouses under general provisions in **74**, and decriminalized or **granted immunity in 34**.
- Marital rape is illegal in 50 American States, 3 Australian States, **New Zealand, Canada, Israel, France**, Sweden, Denmark, Norway, Soviet Union, Poland and Czechoslovakia and several others.
- The **UK**, from which the IPC is largely derived, **removed** the marital rape **exception in 1991**.

## What can be Done to Curb Marital Rape?

- **Jaya Jaitley Committee Recommendations:** Raise the **minimum marriage age** for women from **18 to 21** to promote gender equality, improve **maternal health**, and reduce the **risk of non-consensual sex (marital rape)**.
- **Legislative Reforms:** Amend the **BNS** to remove the **marital rape immunity** and recognize **spousal consent** as a legal necessity.
- **Alternative Legal Frameworks:** Expand the **Domestic Violence Act, 2005** to explicitly **include marital sexual violence**, offering stronger civil remedies like restraining orders and compensation.
- **Global Best Practices:** India can study **UK, Canada, and Australia's** laws to develop a culturally adaptive marital rape law, **aligning with global human rights** while considering socio-cultural realities.

## Conclusion

The debate on marital rape highlights **tensions between personal autonomy**, legal equality, and socio-cultural norms. While many countries have criminalized it, India retains **legal immunity for husbands**. Judicial rulings emphasize **consent and dignity, but legislative reluctance persists**. The issue requires legal clarity, balancing individual rights with societal concerns.

### Drishti Mains Question:

Critically analyze the arguments for and against criminalizing marital rape in India.

## UPSC Civil Services Examination Previous Year Question (PYQ)

### **Mains**

**Q.** Is the National Commission for Women able to strategize and tackle the problems that women face in both public and private spheres? Give reasons in support of your answer. (2017)

**Q.** We are witnessing increasing instances of sexual violence against women in the country. Despite existing legal provisions against it, the number of such incidences is on the rise. Suggest some innovative measures to tackle this menace. (2014)

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