

## Marital Rape – Malediction To Society

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### Abstract

Despite the increased recognition of various Penal laws in India, the Indian Penal Code, 1860 does not criminalize Marital Rape under the provision of section 375, as it does not recognize it as a crime for a husband to rape his wife. In this Paper, I will try to depict how these arguments advanced for not criminalize marital rape are erroneous. This Paper talks about the criminalization of marital rape, whatever form the rape may be analyzed. Any forceful sex without the spouse consent will amount to Rape. This Paper will also discuss why identification of marital rape should come under one of the Explanations of “Rape” as defined under sec 375 of IPC. Through a critical analysis of Article 14 of the Indian Constitution, we argue that the marital rape exception clause found in the Indian Penal Code, 1860 is wholly unconstitutional. Further, we note the lack of existing alternative remedies for a woman to seek redress under the law if she is raped by her husband. I would conclude on the note that criminalization of marital rape is wholly necessary and also propose a model for the same by suggesting amendments to criminal law as well as noting changes required in civil law, particularly, the law relating to divorce.

Keywords: Marital Rape, Section 375, Sexual Offence, Marital Offence, Sexual Assault.

### Introduction

Despite of various protections and safeguards through different legislation both at National and International level, women are

continued to be discriminated and victimized. The offence against woman are endless as, for instance, Sexual Harassment, Molestation, Eve – Teasing, Acid Attack, Rape, Dowry Death, Domestic Violence, Female Feticide, Female Genital Mutilation and so on. In the pool of so many problems ‘Marital Rape’ is one of the very crucial problems and is left unrecognized and ignored till date by our Indian Legal System as Crime, which needs immediate and urgent attention of legislations. The sub-sections detailed in Section 375 of the Indian Penal Code describe the circumstances under which a person can be prosecuted for rape. But unfortunately, if the offender is the spouse of the victim, then these clauses do not provide any protection to the victim.

**Meaning of Rape:**

The origin of the word “rape” lies in the Latin term rapio, which means “to seize”. The literal meaning of “rape” is forcible seizure, that is, the ravishment of women against her will or without her consent or with her consent obtained by force, fear or fraud or the carnal knowledge of women by force against her will.

“Rape”, the most basic yet the most severe violation of human rights of women, is punishable by law and unanimously treated as a heinous crime across the globe. The Supreme Court of India has very clearly stated that “Rape is a deathless shame & the gravest crime against the human dignity.”<sup>3</sup>

The words of section 375 of IPC by the virtue of Criminal Law (Amendment) Act, 2013 are<sup>4</sup>:

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<sup>3</sup>Issues and Challenges related to Marital Rape in India.

<sup>4</sup>Earlier it was substituted by Act 43 of 1983, sec 3. Sec 375, before substitution, stood as under “375. A man is said to commit "rape" if he-

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

“375. A man is said to commit "rape" if he-

Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First—against her will.

Secondly—without her consent

Thirdly—with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to

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Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation – penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception – Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora. Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.<sup>5</sup>

Now, if we look closely, section 375 comes with an exception, of which it clearly talks in the definition. The exception states, "sexual intercourse by a man with his own wife, the wife not being under 15 years of age is not rape", Though it was exceeded to 18 years of age in 2017 by the supreme court of India in its verdict for independent thought Vs Union of India (2017). This exception in legal terms, is known as, marital rape.

Marital Rape refers to the unwanted intercourse between a man and his wife, the denial being on the part of the wife, obtained by force, threat of force, or physical violence, or when she is unable to give consent. It is a non-consensual act of

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<sup>5</sup> The Exemption excludes rape committed in marriage if the age of wife is more than 15 years.

Recently, Supreme Court Struck down this part and increased the age from 15years to 18 years in : **IndependentThought V. Union Of India, AIR 2017 SC 4904**

violent perversion by a husband against his wife where she is abused physically and sexually.”

In the legal world or in the books of law this cruelty is basically a legal term but to explain what it might feel like, A Filipino journalist, F.H. Batacan, in one of her writings, wrote:

Her friends used to tell her it wasn't rape if the man was your husband. She didn't say anything, but inside she seethed; she wanted to take a knife to their faces.<sup>6</sup>

This line, quoted by F.H. is just a glimpse of what the survivors of marital rape have to suffer. Think about it like this, the person who was once bullied in the classroom by some students still carry that scar with him, then how can a person who is sleeping next to her rapist be not affected? Now, if ragging is a crime and inflicts mental trauma to a person why does rape of such a kind be ignored? How is the mental agony of the person bullied so different from the being raped by her husband that she deserves no remedy at all? This exception, thus, is not just volatile of article 14 because it provides some extraordinary kind of powers in the hands of the husband of such wife but it is also volatile of article 21 of the Indian constitution which guarantees the right to live a dignified life and right to enjoy personal liberty.

But, if there are so many loopholes in this exception, what is the reasoning behind still keeping it? Let's find out.

#### **History of Marital Rape:**

As per Section 375 Exception 2 of IPC, the rape of one's wife, above 18 years of age, is not considered to be as a punishable offence. The exemption clause is not just an accidental loophole in the law but has its roots in the English legal system which can be traced from a judgment delivered almost 300 years ago.

Chief Justice Matthew Hale first announced the legal impossibility of rape in marriage in a seventeenth-century treatise where he established the irrevocable consent theory, which argued that men had an absolute right to sexual relations

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<sup>6</sup>[https://www.goodreads.com/author/quotes/15965684.F\\_H\\_Batacan](https://www.goodreads.com/author/quotes/15965684.F_H_Batacan) (14th september 2022, 10:07 AM)

within the bonds of marriage, and provided the foundation for a marriage, and the foundation for a marital rape exemption.<sup>7</sup>

In the 1970s, even the states as civilized as USA had this exception decriminalized but by the time, they touched the year of 1993, all 50 states eliminated the “marital rape exception”. The simple reason behind this is that the core purpose of marriage was believed to be impregnation, and that is why the consent to sexual intercourse was believed to be an inherent part of such relation or rather immaterial.

In common law, the contract of marriage included the husband’s “right to sex”, that means, by entering into that contract, the wife has given her consent to sexual intercourse for the entire course of time till the contract persists. It was also believed in the laws of many countries that the wife is the property of the husband and, thus, it is the responsibility of the husband to take care of her in whichever way that pleases him since it was definitely what the lawmakers thought of a woman. On reading the decriminalized section 497 of IPC which talks about adultery, it will yet be clearer.

The section suggests that whoever has sexual intercourse with a person who is the wife of another man, without the consent of that man, such sexual intercourse is guilty of the offence of adultery. This clearly means that such man, if enters into a sexual intercourse with a woman whose husband gives consent to such intercourse, shall not be guilty of committing the offence of adultery. Similar fact was raised by the apex court in a judgement regarding constitutionality of section 497 of IPC. The good thing is that the court understood the irrelevance of this section and decided struck down its constitutionality in the verdict of *Joseph Shine Vs Union of India* (2018).<sup>8</sup>

#### **Different stances on Marital rape by veterans**

There are several different stances by different people on the issue of criminalizing marital rape.

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<sup>7</sup> History of the Pleas of the Crown: 1 Hale P C (1736) 629.

<sup>8</sup> *Joseph Shine V. Union of India*, 2018, SCC Online 1676

First View – Going by the legality of the facts, a husband cannot, be held guilty by ravishing his wife on account of matrimonial consent which she can retract.

This philosophy says that husband in marriage gets right over his wife in the form of matrimonial consent and she cannot retract. So, logically we can draw the conclusion that Marital Rape doesn't exist in such theories because marriage institution opposes such type of offence when put against husband. In 2017, the central government filed an affidavit in the case asking for the criminalization of marital rape.

In the affidavit, the central government said that there could be fear of such criminalization to be used as a tool for harassing husbands as happened with section 298(A) which talks about anti-dowry laws. The center also said that this kind of criminalization will not prove any purpose since there will be no way to verify the allegations of rape made by wife against her own husband. According to the affidavit submitted by the center, marital rape cannot be criminalized in India because of many socio-economic factors such as poverty, deprivation witnessed in case of literacy, lack of financial empowerment among majority of the woman, mindset of the society, vast diversity, etc.

Also, Justice C. Hari Shankar, in a verdict of Delhi high court upheld the validity of marital rape, saying it was based on "intelligible differentia".<sup>9</sup>Also, in opining for the validity of marital rape, Delhi government, through its counsel Nandita Rao contended that criminalizing marital rape would be violative of article 20(2) of the Indian constitution since sexual abuse is already an offence under domestic violence law. Ms. Rao said that sexual abuse is an offence under 498A in IPC which deals with a husband subjecting a wife to cruelty.<sup>10</sup>

But on the other hand,

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<sup>9</sup><http://www.menwelfare.in/media/media-coverage/delhi-high-court-delivers-split-verdict-on-marital-rape/> (14th

September,21:56)

<sup>10</sup><http://www.menwelfare.in/media/media-coverage/delhi-high-court-delivers-split-verdict-on-marital-rape/> (September 22, 8:05

AM)

## Second View - Wife might lawfully refuse sexual intercourse to her husband

In R V. Clarence – there was a case where a husband was suffering from vulnerable disease and he communicated this to his wife during sexual intercourse. He was convicted by the trial court on unlawfully committing grievous hurt.

According to Justice Field and Justice Charles there may be cases in which a wife might lawfully deny sexual intercourse to her husband and in such a case if she is still subjected to such cruelty, the husband might be held guilty of crime.

In a recent case regarding the applicability and interpretation of Medical termination of pregnancy act 1971, Justice D Y Chandrachud also determined that the meaning of rape must be held to include “marital rape” for the purpose of the MTP Act and Rules, writing that “[a] woman may become pregnant as a result of non-consensual sexual intercourse performed upon her by her husband. We would be remiss in not recognizing that intimate partner violence is a reality and can take the form of rape.”<sup>11</sup>

The court even went to the extent of calling such women as “survivors of sexual assault or rape or incest” mentioned in 3B(a) of the MTP rules.

In the famous case of Nimesh Bhai Bharat Bhai Desai V. State of Gujarat (2018), Nikita was wife of Nimesh, age 28. The Relation between them was initially good but later the husband’s activity became perverted which was offence u/s 377, he also started carrying out sexual activities in public place i.e. offence u/s 354.<sup>12</sup>

So, in the following case Gujarat High Court took a serious concern about the concept of Marital Rape.

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<sup>11</sup><https://www.jurist.org/news/2022/09/india-supreme-court-reaffirms-right-to-safe-and-legal-abortion-regardless-of-marital-status/#:~:text=Justice%20Chandrachud%20also%20determined%20that,upon%20her%20by%20her%20husband.> (3<sup>rd</sup> October 2022, 2:12am)

<sup>12</sup>Supra note 2



According to this theory, apparently there are different views on the validity of the exception and against the same as well, some cases that proved to be useful to trigger the discussions over this loophole are as follows:

**Cases related to Marital Rape**

NIMESHBHAI BHARATBHAI DESAI V. STATE OF GUJARAT (2018)<sup>13</sup>

Sections invoked: section 376(a), section 376(b), section 354, section 377, section 498A, section 114.

**Questions before the court:**

1. Whether a wife has a right to file a case against her husband for engaging in unnatural sex with her punishable under section 377 of the IPC?
2. Would forcing oral sex between a husband and a wife, constitute a similar offence as is the case in unnatural offence under section 377?
3. If the husband compels his wife to indulge in oral sex, does the same constitutes an offence of cruelty under section 498A of IPC?
4. Whether forcing a wife to indulge in oral sex amounts to rape punishable under section 376 of IPC?

**Judgment:**

In this case, although the validity of the exception of marital rape was upheld, the court stated that the woman can prosecute her husband for unnatural offences under section 377. The court observed that the wife is not the chattel of the husband and subjecting wife to such cruelty for the fulfillment of her marital duties is violative of her guaranteed dignity. The court also urged the legislature to go into the soul of this serious issue.

**Essential key points of the case:**

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<sup>13</sup> [Nimeshbhai Bharatbhai Desai v. State of Gujarat, [2018 SCC OnLine Guj 732](#), decided on 02-04-2018]

In this case the court classified marital rape into three general classifications that are as follows:

- Battering rape: In this type of marital rape, women experience both physical and sexual violence in the relationship and many ways. Some instances are those where the wife is battered during the sexual violence, or the rape may follow a physical violent episode where the husband wants to make up and coerces his wife to have sex against her will.
- Force only rape: In this type of marital rape, husbands use only that amount of force, as it is necessary to coerce their wives. In such cases, battering may not be a characteristic and women who refuse sexual intercourse usually face such assaults.

In addition to physically forcing a woman, a man may use a variety of tactics such as threatening or coercing the woman to bow or surrender for sex. A 2002 study showed that, 30% of married women feel that their husbands may have forced sex with them because they spend on them. The same study also revealed that women were also disgusted or humiliated in sexual activities. Another study states that women, fearing any serious consequences, accepted their husband's demands.

- Obsessive rape: In obsessive rape, assaults involve brutal torture and/or perverse sexual acts and are most commonly violent in form. This type has also been labelled as sadistic rape.<sup>14</sup>

This type of rape is found in a very small number but the obsessive rape level is seen to be 6% in marital life. In such cases, men expect their wives to comply with pornographic acts. He expects his wife to act in bondage sex or porn films in front of the acting husband. Such sexual activities are found fun by these men and they feel sexual arousal by giving their wife pain from perverted acts.

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<sup>14</sup> Supra note 2

One more such kind is traumatic rape.

Traumatic rape: According to a 1985 study, it is the most common type of marital rape. In all types of marital rape, 48% of the cases fall in this category. According to one study, such rapes were carried out with intentions such as hostility, retaliation and humiliation towards women. Many women who experience verbal and physical abuse in their marital life also have to endure such marital rape.

**Independent Thought V. Union of India (2017)<sup>15</sup>**

Sections and articles invoked: exception 2 of section 375, article 14, article 15(3), article 21

Question before the court:

1. Whether sexual intercourse between a man and his wife, the wife being between 15 and 18 years of age is rape?
2. Whether the exception 2 of section 375 of IPC unreasonable?
3. How discriminatory is exception 2 of section 375 IPC?
4. Is the court creating a new offence?

**Judgement:**

The court, in this case, held that the condition put under the exception is arbitrary and discriminatory. The court also held that such a condition is violative of the rights guaranteed to a girl child under article 14, 15 and 21 of the Indian constitution and thus is Ultra vires. In the given case, it was also found that such a person is also liable under section 3 and section 5 of the POCSO ACT and since the POCSO act is a special legislation, it was bound to prevail. Hence, the court decided to read down exception 2 of section 375 IPC and thereafter amended the age from 15 to 18.

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<sup>15</sup><https://www.legalserviceindia.com/legal/article-6315-independent-thought-vs-union-of-india-2017-10-scc-800.html>  
(19th september 2022, 01:34 AM)

### **Hrishikesh Sahoo V. State Of Karnataka<sup>16</sup>**

Sections invoked: Para 28 of section 376 IPC, article 14,15,16, 21 of the Indian constitution, section 498A, section 506, section 6 of POCSO act.

Questions before the court:

1. Whether cognizance taken against the husband for offence punishable under Section 376 of IPC was valid?
2. Whether the prosecution, despite the presumption under Sections 29 and 30 of POCSO act, has to prove the foundational facts beyond all reasonable doubt?
3. Whether the Court to try the offences under the Act has jurisdiction to try both the offences under the IPC and POCSO act?
4. Whether the charge sheet against the petitioner should be altered to include addition of the offence punishable under Section 377 of IPC?
5. Whether a proceeding under the POCSO Act against the petitioner needs to be interfered with?

Judgement:

In the given case, it was held by the learned judge that “in the peculiar facts and circumstances” of the case, when the husband “rapes” a wife, he cannot claim the protection of exception enumerated under Section 375 of the Indian Penal Code (IPC), since the exemption is not “absolute”.<sup>17</sup>

The court also opined that no exemption in law can be so absolute that it becomes a license for commission of crime against society.

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<sup>16</sup>HRISHIKESH SAHOO And STATE OF KARNATAKA &Ors | SLP(Cri) 4063/2022

<https://www.livelaw.in/top-stories/marital-rape-supreme-court-karnataka-high-court-section-376-ipc-husband-raping-wife-198701> (3rd october, 2:39 am)

<sup>17</sup><https://www.newindianexpress.com/opinions/2022/apr/15/why-karnataka-marital-rape-verdict-is-problematic-2442098.html> (3rd october 2022, 2:53)

### **Constitutional validity of marital rape**

Marital rape being a gift of British era works on many biased doctrines from the times of British. One such doctrine is the “doctrine of coverture”. According to this doctrine, woman was not looked upon as an independent legal entity so far as to kill the individual identity of women and merge it with her husband. Marital rape is largely influenced by this doctrine.

Along with this, the exception 2 of section 375 is also violative of article 14 of the Indian constitution as it creates two classes of woman on the basis of their marital status and protects the women who are unmarried from the same acts that might have been inflicted upon a married woman. Marital rape also violates the purpose of article 21 of the Indian constitution which guarantees a dignified life to all. Supreme Court, while delivering justice in *State of Karnataka V. Krishnappa*, it was determined that sexual abuse apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a woman. In the same judgment, it was held that non-consensual sexual activity qualifies as both physical and sexual violence. Also, the *SuchitaSrivastava v. Chandigarh Administration*, The Supreme Court equated the right to make choices related to sexual life of oneself with right to personal liberty, privacy, dignity and bodily integrity in accordance to article 21 of the Indian constitution.

Now, Exception 2, being a part of section 375 of IPC should practically safeguard its purpose but unfortunately it is not so. The purpose of section 375, on reading, is clear as to save the women from such activities by the perpetrators, irrespective of who they are, but at the same time, it provides extraordinary immunity to the perpetrator if he happens to be the husband of such woman. This clearly fails the purpose of section 375 for a woman just because she is legally tied to a person, and whether that person treats her like a chattel or not becomes immaterial to such keeping.

### **Statistics of marital rape in India:**

Approximations have stated that a young married woman dies from being burned, beaten or driven to suicide from

emotional abuse by her husband every 6 hours. According to the UN Population Fund, more than 2/3rds of married women in India, aged between 15 to 49 have experienced torture in terms of physical abuse, rape or forced sex.

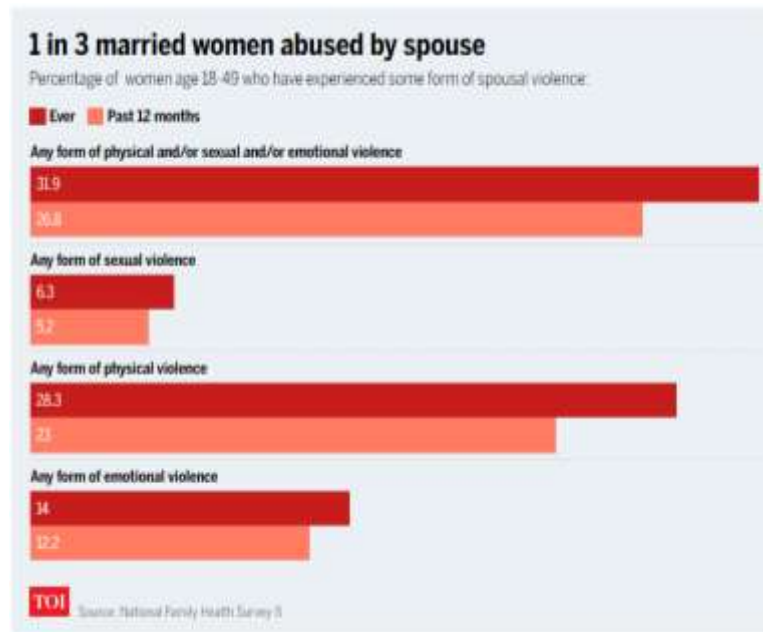
According to National Crime Record Bureau, there is no such offence like Marital Rape in India but unfortunately Marital rape is in existence, a cruelty that has scarred the trust and confidence in the institution of marriage since a large number of women have faced the brunt of the non-criminalization of this practice.

According to the National Family Health Survey (2015-16) 10.4% of married women across age groups complain of spousal sexual violence. The rationale behind keeping marital rape under the exemption is the notion of "Implied Irrevocable Consent", which in simple word means that once a woman gets married, she has given her consent.<sup>18</sup>

Also, According to the most recent "National Family Health Survey (2019-21)" (NFHS-5) nearly 1 in every 3 Indian woman aged 18-49 has suffered some form of violence by her husband in a matrimonial setting, 6% of which have suffered sexual abuse. This study was conducted in around 6.37 lakh sample in 707 districts around 28 states and union territories covering 7,24,115 women and 1,01,839 men to provide disaggregated estimates upto district level.

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<sup>18</sup><https://www.livemint.com/Politics/2On0uNbW6ufrjabfKZwPnM/Marital-rape-Survey-takes-lid-off-sexual-violence-by-husband.html>



In a study conducted by the International Centre for Women (ICW) and United Nations Population Fund (UNPF), which was conducted only in eight states of India, namely, Uttar Pradesh, Punjab, Haryana, Rajasthan, Gujarat, Maharashtra, Madhya Pradesh and Odisha covering 9,205 men and 3,158 women aged 18-49, the sample being representative of caste, religious and income groups.<sup>19</sup>

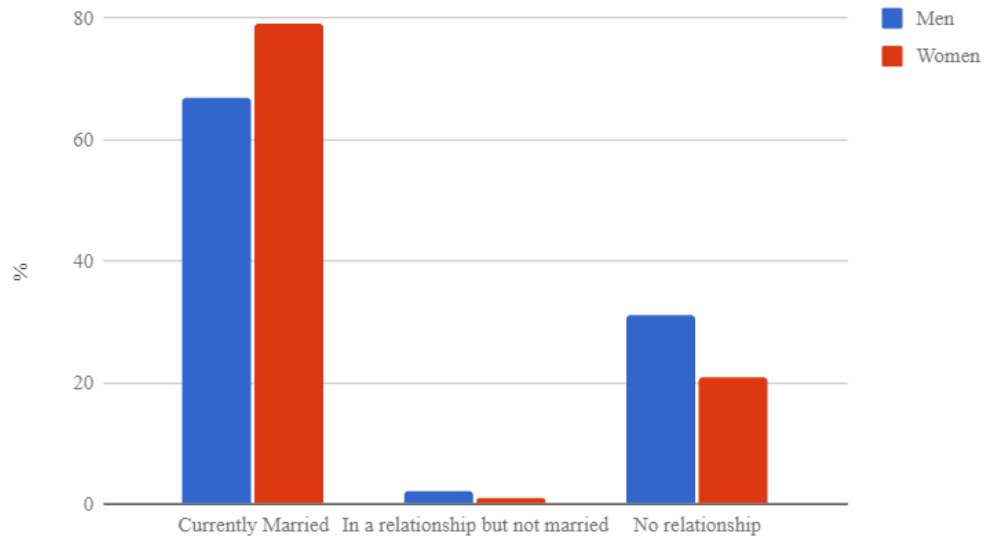
The findings of the study can be understood by the graph below:

The following graph gives insights about the sample that was the part of the study.

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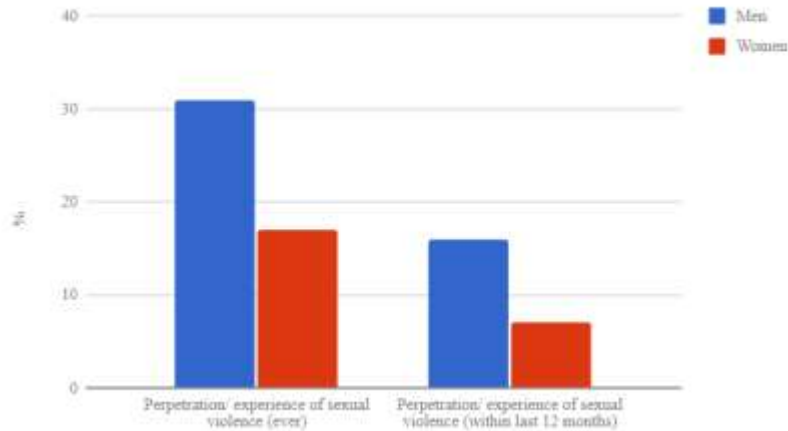
<sup>19</sup><https://www.thehindu.com/data/Statistics-on-marital-rape/article60100071.ece?homepage=true> (September 15, 12:17 AM)

### Marital status



Now, here's the graph for the prevalence of sexual violence among the married couples within the wedlock.

### Sexual violence within marriages



### Alternative Remedies for Marital Rape:

Here, in Exception 2 of sec 375 of IPC there is no relevant reason for the exclusion of sexual act or sexual intercourse between a husband and wife to be kept outside the preview of rape. Where, we see that the law does not criminalize Marital Rape, a specific form of Marital rape is Criminalized i.e non – consensual sexual intercourse when a wife and husband are living separately on account of judicial



separation or otherwise as stated in section 376 (B) of IPC, 1860 read as :

“376B: Sexual intercourse by husband upon his wife during separation: Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation: In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of sec 375".<sup>20</sup>

This section stipulates that in sec 375(2) of IPC - Consent is presumed, which seems to be irrelevant here in sec 376(B) of IPC, Since the husband and wife are living separately. The question arises that how mere living together can raise this presumption that the wife has consented for any sexual act or sexual intercourse by a husband. It is clearly violative of Article 14 of the Indian Constitution [Equality before Law].<sup>21</sup>

#### **Section 498A of IPC, 1860:**

“498A: Husband or relative of the husband of a woman subjecting her to cruelty: whoever being the husband or the relative of the husband of a woman subjects such woman to cruelty should be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation: For the purpose of this section, “cruelty” means –

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<sup>20</sup>**376B.** Sexual intercourse by husband upon his wife during separation: Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

**Explanation.—** In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

<sup>21</sup>Constitution of India by M.P Jain.

- a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.<sup>22</sup>

**Section 354 of IPC, 1860:**

“354 - Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, 1 [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].”<sup>23</sup>

**Conclusion:**

Although there are laws for the protection of married women in Protection of Women from Domestic Violence Act, 2005 as well but for the purpose of safeguarding the interest of the society and also to prove the strict applicability of the laws made to fight the offences and wrong against the society, there is need and demand for the criminalization of marital rape under the Indian Penal Code, 1860 or separate legislation for the concept of Marital Rape, since Marital rape should rather be a crime and not a concept anymore.

The exemption given to marital rape, as Justice Verma noted, “stems from a long out dated notion of marriage which regarded wives as no more than the property of their husbands”.<sup>24</sup> And I believe it is high time that we crawl our way out of the colonial notions and do what’s in the best interest of our nation.

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<sup>22</sup>Indian Penal Code, 1860 by S.N Mishra

<sup>23</sup>The Indian Penal Code, 1860, sec 375 as amended by the Criminal Law (Amendment) Act, 2013 (13 of 2013)

<sup>24</sup>Justice Verma committee