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## **“BREAKING THE SILENCE : UNVEILING THE HIDDEN TRAGEDY OF MARITAL RAPE”**

**ABSTRACT** : Marriage in India is the most blessed form of sacrament which is believed , to be adopted by individuals. Its blissful and eternal nature gives it a supreme identity amongst all religious beliefs. However , such divine and holy concept is dealing with the most cruel and hidden traumas of the marital bond which is still unheard in the society . Certain, on going criminal offences which takes place beneath these marital obligations are left unrecognized not only by the social beings but also has not gained any validation or identity in the supreme law of the country . one such serious offence which camouflaged with the marital duties is named “marital rape” that has been creating a havoc in the individuals’ lives. It is one of the most serious and the most cruel social evil that exists in our country . marital rape has taken over the very sacred element of marriage and has been a symbol of gender distinction and biasness and thus , posses a huge threat to gender justice in India . This practice has been followed since ancient times and still continues to be a disgrace in the institution of marriage . This idea is critically examined in the judicial courts by several people demanding its criminalization and legally implementing laws to eliminate the evil offence of marital rape from the country as there are no proper laws present to tackle this

satanic event and thus powerful and supreme laws are required to bell the cat of marital rape from the nation.

**KEYWORDS:** Marriage , marital obligation , criminalization , rape , marital rape , society , judicial courts , laws , gender justice , offence.

**RESEARCH OBJECTIVE:**

1. To analyse its better understanding in the society and to create an awareness amongst the social beings.
2. To understand the psychological impact and its effect on the mental health of most females .
3. To critically examine various landmark judgements of the courts and strive towards declaring it as evil and understanding its need for criminalization in Indian law.
4. To put forward contentions as to make marital rape a genuine and serious ground for divorce in Indian law .

**INTRODUCTION:**

India is a country where marriage is treated to be the most blessed sacrament under all beautiful religions . As per the holy scriptures it is defined that marriage makes a man and a woman become one flesh as they receive the communion of marriage . The wedding bells allows the pair to become one body and one soul . Though Being such beautiful sacrament still it carries a heavy weight on

itself which is hidden in the realities of the world . This article is all about shattering the taboos and addressing the silent epidemic of marital rape .

Section 375 of the Indian penal code talks about the most heinous offence which involves rape committed against women without their consent . The question the society is dealing with lies under **section 375 exception (ii)**<sup>1</sup> which states that , sexual intercourse or sexual acts by a man with his own wife , the wife not being under fifteen years of age , is not rape .This exception to marital rape has been a great fight for the women who are trapped in the vows of marriage and thus ,does not allow them to unmask the marital rape offence in the society.

Rape in bed or marital rape is not a different term when being put up in the definition of rape under section 375 of Indian penal code . The very substance of rape is found in this which may be regarded as husband being the wrongdoer and wife as his prey . This exception so provided curtails the consent giving power of the women regarding her body once she achieves the commitment of matrimony and thus works upon the idea of consent in perpetuity which suggests an inference to the assumption that in the ceremony of marriage a women bestows consent held by her husband in perpetuity which she cannot retract. This conception finds its origin from the colonial era which imparts a notion that a , “ women is the property of husband once she takes up the vows of marriage” also **“The husband cannot be held responsible for raping his lawful wife due to mutual consent and contract. The wife has given up herself to her husband and cannot reverse it. Matthew Hale, a 17th century lawyer, established the common law marital rape exemption with a cryptic declaration”**<sup>2</sup> . According to this if a women accepts to tie the bond

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<sup>1</sup> Section 375 in The Indian Penal Code, 1860

<sup>2</sup> THE MARITAL RAPE EXEMPTION: A VIOLATION OF A WOMAN'S RIGHT OF PRIVACY : MARIA PRACHER ; M. HALE, PLEAS OF THE CROWN 629 (1847);

of marriage with a man she provides an implicit consent to go forward with sexual intercourse or indulge physically under the veil of marital promise and this idea is strengthened and given a real form and nature by the exception so contained in section 375 of Indian Penal Code that explicitly decriminalises marital rape.

**As per Black's Law Dictionary, marital rape is defined as “ a husband's sexual intercourse with his wife by force or without her consent”<sup>3</sup>.** Therefore, rape in marriage is the use of women's body by her husband whenever or however he may desire without or against her will or consent. As marital rape is not criminalized under Indian law it leads to difficulty in seeking separation in toxic marriages and even in other judicial remedies for women. This article argues that regardless of various family law acts and other provisions there should be an establishment of criminalization of marital rape and hence, it should be a valid ground for seeking divorce and free themselves from the oath of marriage.

## **LITERATURE REVIEW:**

This research is drafted out of previously written journals and certain books which reflected light on the serious issue of marital rape. There have been numerous researches carried on in the past few years which effectively raised importance about women's dignity and purity of her body and

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<sup>3</sup> Marital Rape - A Legalised Form Of Oppression ; Indian Journal of Law and Legal Research  
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the struggles they go through in their course of marital life under so called taboo set up by the society in the name of marital obligation .

**Dr. Sanjay Sindhu & Monika Thakur**<sup>4</sup>: Sexual abuse, both in and out of marriage, is considered a significant breach of women's dignity. Rape is the most terrible crime committed by men against women, as it involves sexual contact without her consent. Forcible sexual intercourse is a living death for women, but the victim is treated as an accomplice in a society that values chastity as the most important attribute of womanhood. Women are subjected to the ordeal of fire without causing a ripple among onlookers. Sexual offenses harm women's bodies and honor, making them considered the most serious and horrific crimes.

**Raveena Rao Kallakuru and Pradyumna Soni**<sup>5</sup> : in this article , it is reflected how the justifications offered to not criminalize marital rape are incorrect. These texts claim that the marital rape exception clause in the Indian Penal Code, 1860, is completely unconstitutional based on an interpretation of Article 14 of the Indian Constitution. Furthermore, it is noticed the scarcity of alternative remedies available for a woman to seek reparation if she is raped by her husband . Thus, it is concluded on the observation that criminalizing marital rape is entirely necessary.

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<sup>4</sup> Indian Perspective on the legal Status of Marital Rape: An Overview ; International Journal of Multidisciplinary Approach and Studies ; ISSN NO:: 2348 – 537X

<sup>5</sup> Criminalisation of Marital Rape: Understanding its Constitutional, Cultural and Legal Impact ; volume 11 issue 1 ( 2018 )

**Justice verma committee** : <sup>6</sup>“Our view is supported by the judgment of the European Commission of Human Rights in C.R. versus UK, which endorsed the conclusion that a rapist remains a rapist regardless of his relationship with the victim,” the 630-page report said”.

“According to the common law of coverture, a wife was deemed to have consented at the time of the marriage to have intercourse with her husband at his whim. Moreover, this consent could not be revoked,” the committee said.

The urgent need to make marital rape a crime under the Indian Penal Code is emphasised by **Sumati Dhingra in her article "Criminalisation of Marital Rape in India"**<sup>7</sup>. According to the author, society must confront the prevalent myth in order for the criminalization of marital rape to achieve its true goal. Marital rape must be viewed as sexual harassment, and Indian society cannot support women's trends that could potentially advance societal.

**Dipa Dube , in her contention LICENSE TO RAPE: THE INDIAN VIEWPOINT** ,<sup>8</sup> considers rape to be among the most horrific and heinous crimes committed against women. According to the author, a woman who experiences marital rape loses all of her physical and mental integrity and is reduced to a living corpse. The author also blames lawmakers for not listening to married women's demands for justice and the impact of victims from an Indian perspective.

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<sup>6</sup> Report of the committee on AMENDMENTS TO CRIMINAL LAW ; JUSTICE J.S VERMA ( RETD) CHAIRMAN JANUARY 23 , 2013

<sup>7</sup> Dhingra, Sumati and Dhingra, Sumati, Criminalization of Marital Rape in India (May 11, 2015). Available at SSRN: <https://ssrn.com/abstract=2604919> or <http://dx.doi.org/10.2139/ssrn.2604919>

<sup>8</sup> License to Rape: The Indian Viewpoint ; SSRN electronic journal [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=888964](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=888964)

**P.K. Pandey stated in "Marital Rape in India - Needs Legal Recognition"<sup>9</sup>** that women and men play equal roles in humanity's formation. Women are likely to experience numerous humiliations in society. The crimes against women are limitless. Marital rape is highly important because it is not now recognized as a criminal violation. Thus, he has emphasized the importance of criminalizing marital rape under Indian Criminal Rape.

**Sexual Violence in Private Space: Marital Rape in India; By Shikha Chhibbar** :<sup>10</sup> the book states that the **Indian Constitution**<sup>11</sup> provides to "protect women's dignity and forbids discrimination on the basis of gender." Women must be protected by the government from the human rights violations brought on by marital rape. The removal of the IPC Section 375 provision for marital rape would more clearly reflect this commitment, though maybe not sufficiently given the seriousness of the crime and the resistance to admitting it.

## **RESEARCH METHODOLOGY :**

This research paper aims at providing a top notch idea of describing the issue of marital rape and also to spread awareness in the society . Thus , to explore the legal aspect of rape in bed which usually takes place within marital obligation , a mixed – method approach has been used. Firstly, in order to gain individual’s perspective a survey is administered to a representative sample of individuals majorly located in Lucknow , Kanpur , Delhi, and Karnataka. The sample so collected

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<sup>9</sup> Marital Rape in India-Needs Legal Recognition. PK Pandey. Available at SSRN 2290027, 2013. 5, 2013.

<sup>10</sup> Sexual Violence in Private Space: Marital Rape in India By Shikha Chhibbar , FICHL Policy Brief No. 52 (2016 )

<sup>11</sup>Article 15 in Constitution of India; 1950

is deeply interpreted and accepted to have derive to a conclusion as to what the society understands as marital rape and reflects the thought processes , attitudes , and perceptions of different people over such serious crime . Through quantitative analysis of survey responses, efforts will be made to discern patterns and trends in attitudes and experiences related to marital rape .

Secondly, this paper dwells the interpretation and judgements of various case laws which took place in the ambit of Indian judiciary which highlighted the problem of marital rape , demanding its criminalization , and accepting it to be a ground for divorce and thus, eliminating the duties of marital obligation , also taking a view upon the judicial decisions of judges and their perspective of marital rape as an offence .

This combined approach will provide a comprehensive understanding of both the legal and societal aspects of marital rape , thereby enriching understanding of this significant issue .

## **CASE LAWS**

**In 2013 case named as independent thought v. Union of India<sup>12</sup>** , an organization that works for child and women ,challenged the constitutional validity of exception (ii) of section 375 before the supreme court .The supreme held that this is violative of fundamental right of the married women .

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<sup>12</sup> Independent Thought v. Union of India, (2017) 10 SCC 800 : (2018) 1 SCC (Cri) 13 : 2017 SCC Online SC 1222



In a recent judgement of, **joseph shine v. union of India**<sup>13</sup>, supreme court while decriminalising adultery, also marked that a marriage between men and women or the matrimonial relationships are even subjected to constitutional scrutiny and are thus not excused. The idea behind this is that women have their dignity and bodily autonomy , which should never be waived off this may become violative of their fundamental rights which are available in the very heart of the Indian constitution.

In a pending case , named ; **Hrishikesh Sahoo v. state of Karnataka**<sup>14</sup>, here, the supreme court will be deciding if the marital rape exception to section 376 of IPC is violative of the fundamental rights of married women. The petitioner here, claims that she has been grievously tortured and raped several times by her husband which is infringing her chastity and dignity of body and mental health. The issue in the case deals with whether marital rape is a threat to women's fundamental right also does the exception of marital rape in IPC deny married women same status as of men in marriage.

The **JS Verma committee** , challenged and criticized the exception ii of section 375 and put forward a demand to eradicate such social taboo, it concluded that rape in marriage should not be treated as an excuse for tolerance of rape cases. Therefore, it does not give any man a freedom to play with the holy bodies of women without consented by them under the veil of matrimonial relationship. Though marital rape is not an offence but Indian law provides other substitutes to bring order to this turmoil, as though certain provisions of family law may not be explicit but provides an attempt that such chaos to be covered under cruelty to seek divorce or a relief .

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<sup>13</sup>Joseph Shine v. Union of India, (2019) 3 SCC 39 : (2019) 2 SCC (Cri) 84 : 2018 SCC Online SC 1676

<sup>14</sup> Hrishikesh Sahoo v. State of Karnataka, 2022 SCC Online Kar 371 : (2022) 2 KCCR 145 : (2022) 2 KCCR (SN 109) 145

On may 2022 a division bench of delhi high court gave a split judgement where in justice Rajiv Shakhder ,who headed the two judge bench , demanded the unconstitutionality of section 375 exception(ii) while , justice C Hari Shanker , rejected the plea to criminalise it and thus explained its constitutionality .

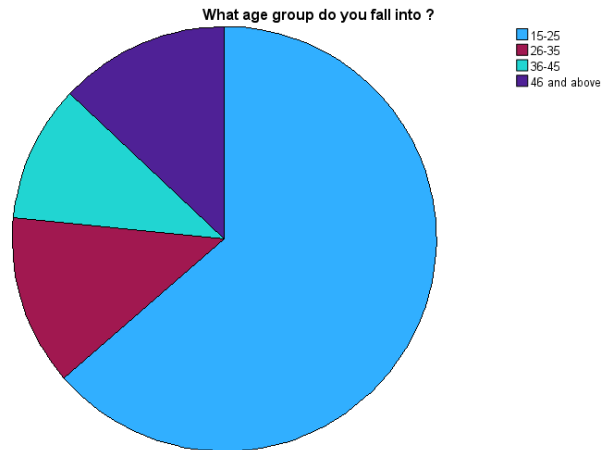
Thus, due the several facts of the cases coming forward marital rape as an offence is a serious issue and hence, is looked into by the apex court to reach to a certain conclusion indicating criminalization of section 375 exception (ii) and thus uphold its unconstitutionality .

**DATA INTERPRETATION :** Analysing information about marital rape among 77 people from different states provides a holistic perception on this sensitive issue. With the help of responses from individuals who are from various ethnicities, cultures and locations, it is possible to disentangle complexities in marriages and comprehend societal stands towards consent in intimate life. Researchers studying this data want to make these many layers manifest to everyone as well as show that marital rape cuts across different demographics calling for informed debate and interventionist policy measures in dealing with this kind of violence against women within marriage.

1.

### What age group do you fall into ?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	15-25	49	63.6	63.6	63.6
	26-35	10	13.0	13.0	76.6
	36-45	8	10.4	10.4	87.0
	46 and above	10	13.0	13.0	100.0
	Total	77	100.0	100.0	



INTERPRETATION : The survey shows that most of the people participating are falling within the 15-25 range, constituting 63.6 percent of the total responses. This suggests a significant representation of younger individuals participating in the data collection. Additionally, smaller proportions are observed in the 26-35 age group and 36- 45 age group comprising 13 percent and 10.4 percent respectively. There are also respondents aged 46 and above showing 13 percent of the total sample population. This mix of ages reflects the diversity of perspectives among those who participated , likely showcasing a range of life experiences and viewpoints across different stages of life.

2.

**Have you ever heard of term "marital rape" before ?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	73	94.8	94.8	94.8
	May be, not sure	4	5.2	5.2	100.0
	Total	77	100.0	100.0	



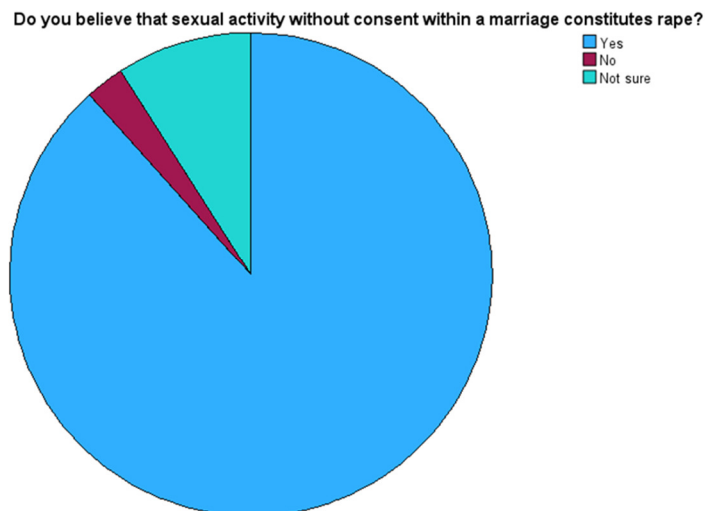
**INTERPRETATION:** The results of the study indicate that a notable proportion of the population was aware of the term "marital rape". More specifically, 73 respondents, or 94.8% of the sample, out of the 77 total respondents, stated that they were familiar with the notion. This indicates a strong understanding of the problem of sexual assault in marriages. Furthermore, a minor segment of participants, accounting for 5.2% of the entire sample, expressed ambiguity or limited acquaintance with the phrase. Although the minority indicates that there may be some need for

additional education or explanation, the general level of awareness highlights the importance of discussing and comprehending the repercussions of marital rape within the context of larger cultural debate.

3.

### Do you believe that sexual activity without consent within a marriage constitutes rape?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	68	88.3	88.3	88.3
	No	2	2.6	2.6	90.9
	Not sure	7	9.1	9.1	100.0
Total		77	100.0	100.0	



INTERPRETATION: The study results reveal respondents' views on whether sexual intercourse without consent within a marriage constitutes rape. A vast majority, 88.3% of the questioned population, agreed that such action constitutes rape. This viewpoint reflects universal acceptance of the necessity of consent, as well as the understanding of marital rape as a major breach of

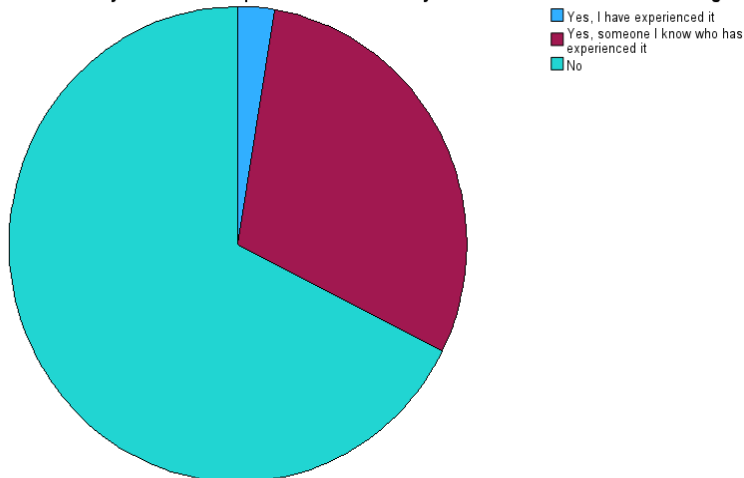
individuals' rights and autonomy within a relationship. However, a small minority, or 2.6% of respondents, disagreed with this stance, implying different interpretations or ideas about the meaning of rape in the context of marriage. Furthermore, 9.1% of respondents expressed uncertainty, indicating possible complexities or uncertainties surrounding the subject. Overall, these findings highlight the continued need of conversations and education surrounding consent , sexual autonomy , and the recognition of marital rape as a form of sexual violence.

4.

**Have you or someone you know ever experienced sexual activity without their consent within a marriage?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes, I have experienced it	2	2.6	2.6	2.6
	Yes, someone I know who has experienced it	23	29.9	29.9	32.5
	No	52	67.5	67.5	100.0
	Total	77	100.0	100.0	

Have you or someone you know ever experienced sexual activity without their consent within a marriage?



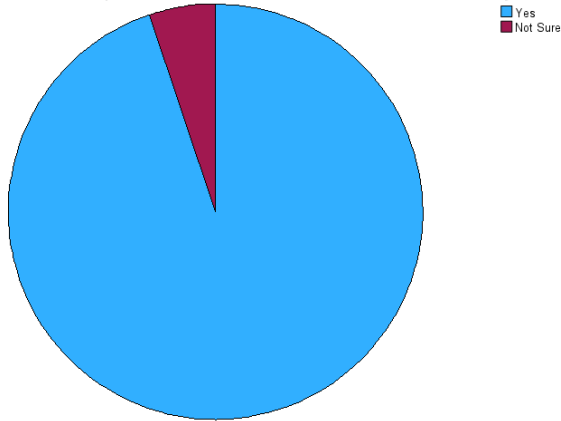
INTERPRETATION: According to the survey, a small proportion (2.6%) of individuals have claimed that they had been involved in sexual intercourse without their permission while married. Furthermore, a greater number of persons (29.9%) confessed to having some experience with it through other people's stories. This means individuals are sexually assaulted by their spouses or by people they know. Nonetheless, most said they have never known anyone who has raped or has been raped within marriages; 67.5%. This then goes on to show that being conversant with and dealing with the issues around this crime is important in order to safeguard those who are married for example from domestic violence and keep them safe.

5.

**Do you think marital rape is a serious issue that needs more attention from society and the legal system?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	73	94.8	94.8	94.8
	Not Sure	4	5.2	5.2	100.0
	Total	77	100.0	100.0	

Do you think marital rape is a serious issue that needs more attention from society and the legal system?



INTERPRETATION: The survey results shows that 94.8 percent of the total sample population of 77 people are of the view that rape in bed or sexual activity without consent within the obligation of marriage should gain recognition in the society and the same awareness should be spread in order to assist the victims of marital rape to raise their voice and does free themselves from such unjust and impure situations. On the other hand , 5.2 percent of the total samples taken are negligent or are unsure about the need for more attention to marital rape and thus, it creates a need for more knowledge , education and advocacy in the legal system about such serious offence to protect the very essence of marriage .

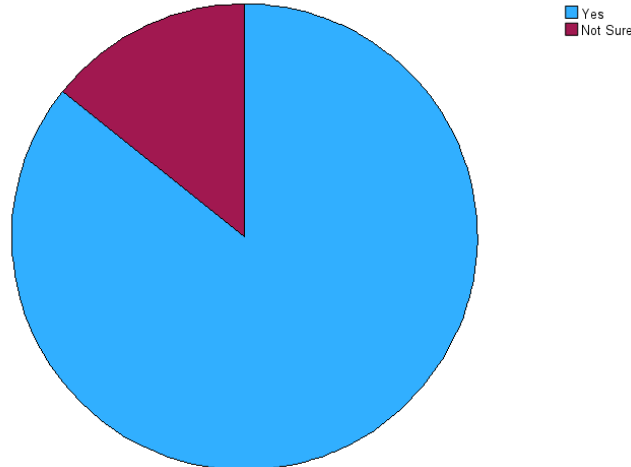
6.

**Do you believe that the absence of specific laws against marital rape affects survivors’ ability to seek justice?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	66	85.7	85.7	85.7
	Not Sure	11	14.3	14.3	100.0
	Total	77	100.0	100.0	



Do you believe that the absence of specific laws against marital rape affects survivors' ability to seek justice?



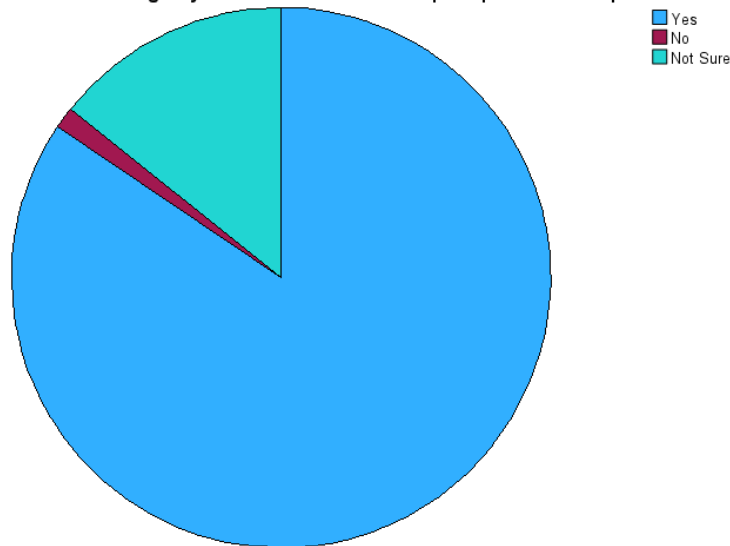
INTERPRETATION: The data collected reveals that 85.7 percent of the total sample deeply form a consensus with the hardships faced by the marital rape survivors and are of the view that due to lack of awareness and absence of law such crime against humanity is increasing at a rapid rate. Although, 14.3 percent people of the total sample collected are still unsure about the laws to be implemented for the marital rape offence. Overall, it's clear that most of them want to see a new human age free from all such impurities and also in favour of the laws to be formed to better help survivors and get justice and control over their lives again.

7.

**Should the Indian legal system criminalize marital rape to provide better protection for survivors?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	65	84.4	84.4	84.4
	No	1	1.3	1.3	85.7
	Not Sure	11	14.3	14.3	100.0
	Total	77	100.0	100.0	

Should the Indian legal system criminalize marital rape to provide better protection for survivors?



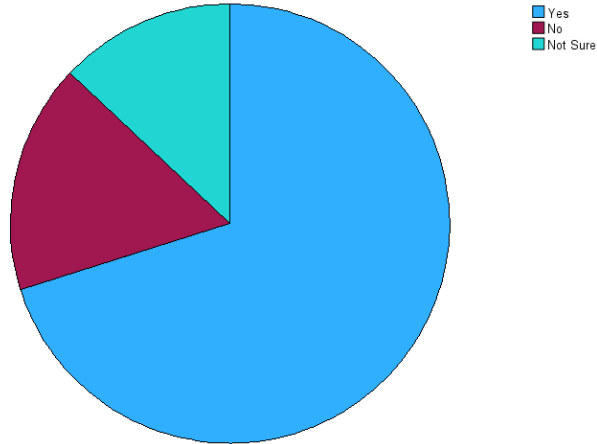
INTERPRETATION: The study reveals a deep consensus among respondents and the criminalization of marital rape offence. Wherein , an overwhelming majority of 84.4 percent respondents are in support of criminalizing the brutal crime of marital rape recognizing the necessity of legal measures to provide better protection for survivors . On the contrary , 1.3 percent respondents are having a negative response to criminalize marital rape this may be due to lack of understanding about the severity and prevalence of the crime . furthermore, less but a notable amount of minority of 14.3 percent shows an uncertainty about the question upon criminalizing marital rape . This dilemma may reflect urgent need for awareness and raising importance and implications of criminalizing marital rape within legal framework. Overall , this data highlights a clear notion of having legislative actions at the earliest to address the issue of marital rape and thus move forward to ensure justice for survivors .

8.

**Should marital rape be treated with the same severity as rape by a stranger under Indian law?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	54	70.1	70.1	70.1
	No	13	16.9	16.9	87.0
	Not Sure	10	13.0	13.0	100.0
	Total	77	100.0	100.0	

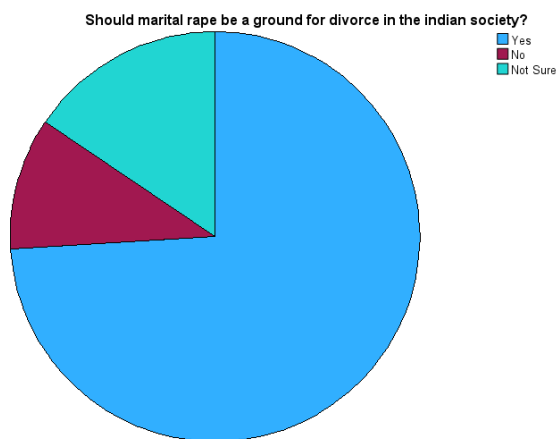
Should marital rape be treated with the same severity as rape by a stranger under Indian law?



INTERPRETATION: The findings reveal that people have diverse opinions about whether marital rape should be treated as diligently as rape by a stranger under Indian law. The data shows that a majority of respondents are of the view that marital rape should be treated as similar as the brutal offence of rape by a stranger neglecting the fact that both the spouses are under marital obligation this reflects the seriousness this majority forms about the offence and shows that a sexual intercourse without a consent mandatorily be termed as rape even if its between husband and wife . However , some , around 16.9 percent , do not agree and think that rape by a husband should treated same as the rape by a stranger . Additionally , 13.0 percent are unsure about this fact and require more information and awareness to form an opinion.

## Should marital rape be a ground for divorce in the indian society?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	57	74.0	74.0	74.0
	No	8	10.4	10.4	84.4
	Not Sure	12	15.6	15.6	100.0
	Total	77	100.0	100.0	



**INTERPRETATION:** The study reveals a strong inclination about forming marital rape an important ground for divorce under Indian law . The data here, reflects that around 74 percent of respondents support the fact that marital rape should be a serious and an effective ground for divorce between spouses and thus needs a recognition in the Indian law. The same issue is raised several times in the Indian judiciary which demanded the treatment of marital rape to be a ground for divorce. Conversely, a smaller portion of 10.4 percent oppose the idea , suggesting diverse perspectives possibly rooted in cultural ,societal, or legal considerations. Furthermore, 15.6 percent respondents express uncertainty , reflecting a need for further discussion and clarity on the issue. In conclusion, these findings, emphasize a prevailing sentiment among the majority for recognizing marital rape as a legitimate ground for divorce.

## CONCLUSION :

**“This is a type of rape that aims to control and domesticate me, sculpting me into the role of a compliant wife. Its purpose is to implant feelings of remorse within me. It seeks to enforce the notion that my husband has complete authority over my body, treating it as his possession. This form of rape is an assertion of ownership and dominance”.**

**- Meena Kandasamy<sup>15</sup>**

Despite ongoing debates and calls for legislation, marital rape is still not considered a crime in India. The Indian Penal Code (IPC) provides that the husband is immune from prosecution if his wife is above 15 years of age. This exemption has been criticized as discriminatory against women and a violation of women's rights.

On the contrary, many countries have criminalized rape in marriage and provided legal protection to women in matrimonial relationships. In countries such as the United States, Great Britain and Australia, marital rape is considered a crime and punishable by law.

The situation in India, unlike these countries, highlights the need for legal reform to address the issue of marriage. The constant debates and calls for change reflect the real social and cultural transformation of India and the need for a more progressive and gender-inclusive perspective of society to solve the problems of gender and violence.

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<sup>15</sup> Meena Kandasamy, When I Hit You: Or, A Portrait of the Writer as a Young Wife  
Tags: marital-rape, marriage, patriarchy, violence-against-women

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<https://www.manupatrafast.com/?t=desktop>

<https://scholar.google.com/>

<https://journals.sagepub.com/doi/10.1177/26318318221083709>

[https://www.researchgate.net/publication/223831051\\_A\\_review\\_of\\_marital\\_rape](https://www.researchgate.net/publication/223831051_A_review_of_marital_rape)

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10021972/>

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4602053](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4602053)

<https://www.thehindu.com/>

<https://www.goodreads.com/quotes/tag/marital->

<rape#:~:text=This%20is%20the%20rape%20that%20tames%2C%20the%20rape%20that>

%20puts,This%20is%20rape%20as%20ownership">%20puts,This%20is%20rape%20as%20ownership

DATA ANALYSIS:

SPSS SOFTWARE:

<https://www.ibm.com/spss-statistics>

DATA COLLECTION:

GOOGLE FORMS:

<https://apps.apple.com/us/app/form-for-google-forms/id1544827472>