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**FROM VOWS TO VIOLENCE: AN ANALYSIS OF MARITAL RAPE IN  
INDIA**- Amisha Singh<sup>1</sup>**ABSTRACT**

Marital rape, a pervasive issue impacting women worldwide, continues to be a contentious subject and is frequently not reported due to social and cultural factors. This paper delves into the socio-cultural aspects of marital rape in India, examining the role of marriage and family in perpetuating domestic violence. It discusses the historical context and legal doctrines that have contributed to the normalization of marital rape and highlights the factors associated with domestic violence in marriages, including socioeconomic status, education, caste, and other demographic factors.

The paper also explores the multifaceted impact of marital rape on women, encompassing physical, mental, and financial consequences. It underscores the urgent need for India to criminalize marital rape to protect women's fundamental rights, including the right to privacy and equality. The paper suggests possible legislation to address this issue and emphasizes the importance of education and awareness campaigns to dispel myths and misconceptions surrounding marital rape.

In conclusion, this paper calls for immediate action to criminalize marital rape in India, providing specific protections for victims and addressing the deeply ingrained cultural attitudes that perpetuate this form of violence. It emphasizes that by taking these steps, India can move towards a more equitable and just society for all.

**INTRODUCTION**

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“A husband cannot be guilty of rape upon his wife for by their mutual matrimonial consent and contract the wife hath given up herself in this kind to her husband which she cannot retract”, Sir Matthew Hale, 1736

The act of sexual assault and coercion between married partners, rape in marriage, is a pervasive issue that impacts women worldwide. Despite being a violation of human rights, it continues to be a contentious subject and is frequently not reported due to social and cultural factors. Regarding the prevalence of conjugal rape and the difficulty of prosecuting perpetrators, India has been the subject of intense scrutiny.

The foundation for Sir Hale's Implied Consent Theory was set in *The History of the Pleas of the Crown*, published in 1736 by Chief Justice Sir Mathew Hale. It stated, "The husband cannot be held liable for a rape committed by himself against his lawful wife, because by their mutual matrimonial consent and contract, the wife has irrevocably surrendered herself in this manner to the husband." This theory not only influenced the common law system of Britain, but also the legal systems of all of its colonies.

The Doctrine of Coverture is another common law principle that provided support for the Theory of Implied Consent. According to this doctrine, a woman's legal rights were eclipsed by those of her spouse upon marriage. This doctrine is based on the legal fiction that the spouses are the same person. The legal status of a married woman is *feme covert*, while that of a single woman is *feme solitary*. A single woman had the right to enter into contracts regarding her property, while a married woman did not.

In England, the Doctrine of Coverture dominated until the mid-19th century, when it was challenged by the feminist movement. It was considered oppressive because it prevented a woman from exercising her legal and economic rights.

Before the landmark *R vs. R* ruling in 1991, rape during marriage was not considered a crime in Britain. After multiple appeals, the House of Lords ruled unanimously against marital rape, stating, "Today, it cannot be maintained seriously that a wife submits herself irrevocably to sexual intercourse under all circumstances upon marriage."

India has one of the greatest rates of sexual violence against women, and the law does not recognise marital rape as a penal offence. Section 375 of the Indian Penal

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Code excludes spousal rape from its definition of rape on the grounds that marriage implies consent to sexual relations. This premise is problematic because it disregards the agency of women within the institution of marriage and perpetuates the notion that wives are their spouses' property. In India, cultural and societal norms discourage women from reporting sexual assault and pursuing legal redress. When women do come forward, they are frequently subjected to victim humiliation, victim blaming, and retaliation from their families and communities.

### **Socio- cultural aspect of Marital Rape**

“To condemn every marriage as violent and every man a rapist not advisable”, Smriti Irani, the minister of information & broadcasting, India (Hindustan Times, 2022)

Abuse committed by men against their wives may look quite different in different nations and can be influenced by a wide range of factors. Domestic violence has been connected to both individual and community-related characteristics, as well as social responses (International Clinical Epidemiologists Network [INCLLEN], 1999; Prasad, 1999; Vindhya, 2000). This association was made by the International Clinical Epidemiologists Network. In spite of this, in order to get a more profound comprehension of the issue of domestic violence in India, it is essential to investigate the social structures of marriage and the family.

An investigation of marriage and family life in India is necessary in order to formulate a legally binding definition of domestic abuse and to provide a framework for the protection of human rights. According to Nanda (2000), in traditional Indian communities, marriage bestows a unique status on women, and married women are often seen as being socially respectable. This is one of the reasons why traditional Indian societies value marriage so highly. Marriages between families in these societies are often orchestrated by revered matchmakers, such as family clerics and other members of the same family. According to Nanda (2000), the parents are the ones who make the final choice about the marriage, despite the fact that the engaged couple may have some say in the matter. In many cases, the couple does not communicate with one another until the day of the wedding. In a study that involved 21,000 women who had ever been married and were between the ages of 25 and 49, with marriages occurring between the ages of 15 and 24, 86% of the women whose consent was not considered by their parents reported meeting their

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husbands for the first time on or around the wedding day. In comparison, only 57% of those whose consent was considered by their parents reported meeting their husbands on the wedding day (Banerji, Martin, & Desai, 2008; Banerji According to Nanda (2000), the decision-making process for arranged marriages in the vast majority of traditional Indian civilizations is heavily influenced by factors such as the individual's caste, social standing, socioeconomic level, and religious beliefs. Gaining a complete grasp of gender roles and relationships in traditional marriages requires first acquiring a solid foundational comprehension of the functions that marriage and the family play in Indian society.

Across a wide range of cultural contexts, the incidence of marital violence committed by men against their wives is connected with a variety of variables, including individual and community characteristics, society reactions, and social institutions such as marriage and family. The conventional gender roles and relationships in India have been heavily influenced by the institution of marriage and the establishment of families. Getting married elevates a woman's social status, and in many cultures, marriages are arranged by parents, who have the final say over whether or not their children's partners are compatible. Despite this, factors such as religion, social rank, socioeconomic standing, and social position all play significant parts in the decision-making process. Because patriarchal families place such a strong emphasis on men, women in these households are relegated to the role of caretaker for the home and their sexuality and marriage choices are controlled by the family. Even though there has been a shift towards more tolerant societal standards, domestic abuse is still rather common and is generally overlooked. Women who have been victims of domestic abuse may find themselves in a difficult position because of cultural obstacles and beliefs about rape. In India, for example, one of the popular beliefs is that a rape cannot occur inside a marriage, and the pain and psychological ramifications that these women face are routinely trivialised by society. Another prevalent prejudice is that a rape cannot occur within a marriage in the United States. The widespread acceptance of domestic violence in India may be attributed, in part, to the country's traditional culture and attitudes, as well as to myths about rape, male dominance, and legal loopholes. On the other hand, there is an absence of empirical research that demonstrates the frequency of rape misconceptions connected to domestic violence in India.

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The ways in which institutions and society as a whole respond to survivors of domestic abuse are significantly influenced not just by the sociocultural and historical backgrounds of the country, but also by the popularly held ideas and attitudes about married women in India. The treatment of survivors requires sensitivity since insensitive responses might make survivors feel even more powerless and worsen their feelings of guilt. Apathy and insensitivity on the part of the criminal justice system are the direct effects of the societal predisposition to keep instances of domestic abuse hidden. The re-victimisation experiences of survivors may be made worse by sociocultural practises and contacts with a variety of organisations and social agents.

Since the beginning of this century, research on domestic violence has been hampered in India by a number of factors, including the prevalence of traditional patriarchal family structures and a cultural resistance to addressing the issue. In India, traditional dowry rituals play a significant part in contextualising the risk factors and cultural practises that contribute to marital violence. This is a particularly important aspect of the situation in India. Even though there are a number of different types of domestic violence, only the most obvious ones, such as physical and sexual violence, are typically taken seriously. Survivors are typically re-victimised in the process of seeking aid and justice for their circumstances.

In India, the submissive position of women within a patriarchal framework and the limiting dynamics of the family all contribute to the perpetuation of marital violence. The next part takes a look at the several sorts of domestic violence, as well as how the law in India defines each of these categories.

### **Factors associated with domestic violence in marriages**

Multiple research studies have identified financial instability, inadequate education and employment status, and insufficient dowry provided by the wife as risk factors for domestic violence (Dave & Solanki, 2000; Panchanadeswaran & Koverola, 2005; Rao et al., 2000). This section delves into important predictors of domestic violence, such as socioeconomic position, education and work level, and caste.

The term socioeconomic Situation. Tichy et al. (2009) performed a research that analysed questionnaires completed by 64 Tamil Nadu women aged 18 and above. According to the findings of the research, women with higher socioeconomic position were less likely to report

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domestic violence that harmed their own social class and were more likely to have false beliefs of domestic violence. Higher social standing was connected with less aid seeking, less acknowledgment of having been abused, and less knowledge that domestic violence affects people of all socioeconomic backgrounds. Regardless, Dave and Solanki (2000) discovered that women from all socioeconomic backgrounds are vulnerable to domestic violence. According to Special Cell data, 64.1% of the 2,930 domestic abuse instances included low-income women, while just 21.3% involved middle-income women. Despite the fact that women with higher socioeconomic status are less likely to report and acknowledge being abused by their partners, their actual rates of violence do not reflect this. In a random home study of 502 women aged 15 to 49, Panda and Agarwal (2005) observed equivalent findings. A greater socioeconomic position (>12,000 Indian rupees per year, or about 49 Indian rupees and one-fourth of a US dollar) was connected with a reduced incidence of physical and psychological violence (18.5%), according to the research. It is impossible to compare the findings with accuracy since the sample size, research site, demographic profile, and procedures used in these studies differ.

Career and education. Studies have yielded different findings regarding the relevance of the victimised spouse's education and work level in the risk of domestic violence. The Male Reproductive Health Survey was given to 4,520 married males in the state of Uttar Pradesh by Koenig et al. (2006).

Physical violence was assessed in the research by identifying whether the husband had physically injured his wife in a number of ways in the preceding year. Similarly, sexual assault was assessed by assessing if the husband physically pressured his wife into participating in sexual intercourse within the same time period. According to the study's results, highly educated wives and husbands were less likely to have suffered recent physical abuse. Women with more educated husbands, on the other hand, reported a higher incidence of coercive sexual interactions, implying that wives are more ready to comply with their husbands' sexual wishes. Husbands may resort to physical force and pressure when their spouses resist their demands.

Panda and Agarwal (2005) conducted a different research in which they examined 502 women between the ages of 15 and 49 in the Indian state of Kerala and discovered that those with a higher degree of education were less likely to face physical and psychological abuse. However, when wives were less educated than their husbands, psychological abuse was more

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common in the long run. Husbands who were routinely working were less likely than jobless husbands to perpetrate physical and psychological abuse against their spouses. Women having stable jobs were shown to be less likely to encounter domestic abuse than those with temporary jobs. The survey also found that women with regular jobs had a higher social class, a higher education level, and live in cities, while those with seasonal or temporary jobs may have a lower salary, a lower education level, and live in rural regions.

According to research, both wives' and husbands' job and educational standing might predict marital violence. Surprisingly, wives with more employment than their husbands reported a higher frequency of physical violence, probably due to the negative impacts of jobless husbands at home, such as stress, frustration, alcohol consumption, and the use of violence to settle problems.

According to the Anthropological Survey of India's "People of India" effort, the bulk of Indian society is made up of between 40,000 and 60,000 endogamous caste groupings (Joshi, Gadgil, & Patil, 1996, p. 6387). The "scheduled castes," as defined by the Indian government as historically disadvantaged lower castes, have the lowest socioeconomic level and are the most marginalised (Ackerson, Kawachi, Barbeau, and Subramanian, 2008; Srinivasan and Lee, 2004).

Women from designated castes (also known as untouchables or dalits, the lowest caste in the system) are the most victimised and require assistance to cope (Visaria, 1999). From 1993 to 1997, Visaria (1999) performed a research in rural Gujarat in which 346 women answered questionnaires, followed by five focus group talks and 36 in-depth interviews. Women from scheduled castes were the most likely to experience marital violence (81%), followed by women from lower castes (77%). The influence of women's caste on domestic violence in India may vary due to hierarchical disparities amongst subcultures. Women from lower-income and lower-caste households were more likely to mention marital violence in interviews, while women from upper-caste families were hesitant to describe their family dynamics and marital violence (Krishnan, 2005a).

Other demographic and sociocultural factors such as women's age at marriage, inadequate dowry, shorter marriage duration, and alcohol abuse by husbands, in addition to socioeconomic status, education level, employment status, and caste, increase the likelihood of marital violence (Krishnan, 2005a, 2005b; Panchanadeswaran&Koverola, 2005; Panda & Agarwal, 2005; Rao et

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al., 2000). As a result, not only are women in India affected by domestic violence, but they may also find it difficult to notice their mistreatment, appreciate the reasons of violence, and seek help. These difficult situations and difficulties often have both short- and long-term repercussions on their health and well-being.

### **Impact of Marital Rape on Women**

This part looks at the different effects that domestic abuse has on women. Domestic abuse hurts women not only physically, but also emotionally, financially, and in the way it affects their children. In this talk, we will talk about studies that have looked at the physical, mental, and financial effects of domestic abuse on women.

Women who are being abused at home worry a lot about their physical health. Studies show that this kind of abuse often leads to serious physical damage. For example, Chowdhary and Patel's (2008) population-based cohort study found that the most common health problems among married women in Goa who went to a primary health centre were dysmenorrhea (29.55%), low body mass index (28.8%), anaemia (19.3%), abdominal pain that wasn't caused by menstruation (15.6%), and abnormal vaginal discharge (13.6%).

Violence or physical pressure in a marriage can have bad effects on a woman's mind. Studies show that not using a condom during sexual pressure can make women more likely to get STDs and HIV, which can lead to social isolation, mental abuse, and being looked down upon. When women test positive for HIV, their violent husbands may accuse them of cheating or kick them out of the house. This can cause mental health problems like suicide thoughts, sadness, shame, guilt, isolation, low self-esteem, and insomnia (Chowdhary & Patel, 2008; Kumar, Jeyaseelan, Suraj, & Ahuja, 2005).

There are big financial effects of domestic abuse on both the person and society as a whole. Even though there haven't been many studies done on this topic, one study found that the average cost of missed work due to domestic abuse was about 760 rupees (about US\$16) per event. This is a big chunk of the monthly income of a family. When time and money spent on medical care for injuries are taken into account, it is thought that the person lost about 2,000 rupees (about \$44) in earnings. Domestic abuse can cause recurring costs, which can put a lot of stress on a family's finances over time. Researchers have found that domestic abuse, especially in

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India, causes more people to miss work, makes people less productive, and lowers their income (INCLEN, 1999). Domestic abuse survivors may also lose their jobs or have to miss work for a long time, which can hurt their finances.

In the end, domestic abuse has a big impact on the physical, mental, and financial health of women and their children. These effects can last a long time and be very bad, causing problems with public health and putting a lot of financial stress on both people and society as a whole.

### **India's need to criminalise Marital Rape**

The fundamental right to privacy is violated when a spouse does not respect his wife's personal space and disregards her "no." In addition, the right to equality is violated when marital rape is not considered a form of rape. The Indian Penal Code defines rape and classifies it as a crime, but there is an exception that states sexual relations between a man and his wife are not considered rape if the woman is older than fifteen. This section normalises the culture of marital rape, which should not be normal and must end. In the eyes of the law, marriage is a shield and a sanctuary, which is why there are no specific protections for victims of marital rape. India must criminalise marital rape in order to provide specific protections for rape victims.

The emotional repercussions of rape and marital rape are identical, and the punishment for both should be identical as well. It is more horrific for a woman to have her self-esteem destroyed by the man who is supposed to adore and care for her, her spouse, than for her to be the victim of a rape. Marriage should not be viewed as a licence for a male to gratify his sexual desires, as this undermines the self-respect and dignity of a woman. Not considering marital rape a punishable offence is equivalent to compelling a rape victim to share a bed with her rapist every night.

Articles 14 and 21 of the Indian Constitution outline, respectively, the right to equality and the right to life. In addition to violating these fundamental rights, marital rape also compromises the right to privacy. Therefore, it is essential to criminalise marital rape in India so that women's rights are not violated and they can live with respect and dignity. The social stigma encircling the issue of marital rape is one of the major obstacles to its resolution. Many people in India believe that a spouse has the right to have sexual relations with his wife regardless of her

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consent. This belief is profoundly ingrained in the patriarchal mentality, and it poses a significant barrier to addressing the problem of marital rape. Frequently, victims are accused for their circumstances and instructed to keep silent or work on their marriage. This attitude must be altered.

### **Possible legislation to criminalise marital rape in India**

Marital rape has been a difficult topic in India for a long time, but there are no rules that make it a crime. In many countries, like India, there are exceptions to rape rules that mean the person who did it doesn't have to go to jail if the victim is their spouse. This loophole in the law puts victims of domestic violence and sexual attack in a dangerous situation, leaving them open to more abuse. To fix this problem, the Indian government needs to pass new laws that make spousal rape a crime. First, the law needs to make it clear that spousal rape is a crime that is different from sexual behaviour that both partners agree to. This will make sure that the law protects people who are raped by their partners and that the people who do it can be held responsible for what they do.

Also, the Indian government needs to get rid of the exception in the present rape rules for people who are married. This clause is out of date and doesn't show how people feel about domestic abuse and sexual attack today. The government needs to make sure that all kinds of rape, including rape between married people, are illegal. This will make it clear that India will not stand for domestic abuse or sexual attack. Setting up the right punishments for people who commit rape in a marriage is also very important. These punishments should be harsh enough to stop people from breaking the law in the future. It's also important to give victims of marriage rape safe places to go, like counselling centres, hotlines, and shelters. These steps will make sure that people who have been sexually assaulted can get the help they need to get over the pain.

Education and information efforts are also needed to make people understand how bad marriage rape is and how it affects the people who are raped. The main goal of these efforts should be to dispel myths and misunderstandings about marriage rape and to support gender equality and respect for human rights. The Indian government needs to make sure that cases of rape between married people are given top importance and that justice is done quickly. This will

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help make sure that people who do bad things are held responsible and that victims get the justice they deserve.

Making marriage rape a crime is an important step towards ending abuse against women in India. The Indian government needs to move quickly to pass new laws that protect victims of domestic violence and sexual abuse and make the people who hurt them pay for what they do. The government should also give people help and tools to help them get over the stress of being sexually assaulted. We can only make a better and more fair world for everyone if we take these steps.

## CONCLUSION

The paper discusses the socio-cultural aspects of marital rape in India, focusing on the role of marriage and family in perpetuating domestic violence. The author emphasises the importance of investigating the social structures of marriage and family life in India to better understand domestic violence and formulate a legally binding definition of domestic abuse. The paper highlights the factors that contribute to the prevalence of domestic abuse in India, including traditional gender roles and relationships, arranged marriages, patriarchal families, and myths about rape. The author also notes the challenges faced by survivors of domestic abuse in seeking help due to cultural obstacles and beliefs about rape.

The paper concludes by stressing the need for sensitivity and support for survivors and increased research on domestic violence in India to address this pressing issue. The author goes ahead to argue the need to criminalise marital rape in India and suggests possible legislation for the same. This paper however in its interpretation examines marital rape as a crime against women however, it is the limitation of this research paper as violation of consent in marriage is not limited to any specific gender. Further, As India does not recognise marriage between homosexual couples the paper only analyses gender from the lens as binary, man or women.

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