

**“Unveiling Marital Rape in India”**

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**Abstract**

The idea of marital bliss and the sacrosanct nature of the marriage are placed at the paramount level in the Indian Institution of ‘Marriage.’ However ‘Holy’ the concept of marriage is depicted, underneath the holiness of marriage the harsh reality of various crimes is hidden. One such globally acknowledged crime is ‘Marital Rape’ still the concept of marital rape and its criminalisation is alien to legal jurisprudence of India. This paper highlights the concept and practice of Marital Rape in India. The paper also traces the historical background of marital rape and its relevance in present day world.

The existence and ubiquity of marital rape has scarred the women across the country and has also raised questions about the sanctity of marriage as an institution. The paper throws light on various types and adverse effects of marital rape. The paper gives an international comparative study on the notion of criminalisation of marital rape. The paper also analyses the different legislative provisions, the judicial shortcomings and attempts to give certain recommendations regarding the criminalisation of marital rape in India.

**Keywords**

Conjugal Assault, Marital Rape, Marriage, Women, Society, India

**Introduction**

*“The day will come when men will recognize woman as his peer, not only at the fireside, but in councils of the nation. Then, and not until then, will there be the perfect comradeship, the ideal union between the sexes that shall result in the highest development of the race.”<sup>1</sup>*

Marriage in Indian culture is considered to be a sacred establishment; it is the primary and most important foundation of a steady family and an enlightened society. <sup>2</sup> The institution of marriage has also become a safe chamber to cover acts like sexual cruelty and different types of ruthlessness in the family unit. Marital rape is one such brutal offence and can be characterized as any undesirable intercourse acquired by drive, danger of power or when wife

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<sup>1</sup> Christina. “The Day Will Come When Men Will Recognize Woman as His Peer....” – Susan B. Anthony.” *Christina Freudenthaler*, 23 Feb. 2016,

<sup>2</sup> Prof Kusum, *Family Law I*, 3 Published by Lexisnexis (3rd 2003).

does not or is unable to give consent.<sup>3</sup> It is a non-consensual demonstration of vicious corruption by a husband against the wife where she is physically and sexually manhandled.

As indicated by Morton Hunt, the typical marital rapist is a man who still trusts that men should "rule" their wives. This includes, he feels, the sexual facets of the marriage as well. He is under the belief system that when he needs her, she ought to be happy, or if nothing else willing; on the off chance that she isn't, he has the privilege to compel her. Be that as it may, in compelling her his passion increases much more than a couple of minutes of sexual delight. He lowers her and reasserts that he is the ruler and she is the subject.<sup>4</sup>

### **Types of Marital Rape**

Marital rape can primarily be divided into three major types as mentioned and discussed below:

- **Battering assault:** In this kind of marital rape, women encounter both physical and sexual savagery in the relationship and from numerous points of view. A few occurrences are those where the wife is battered amid the sexual viciousness, or the rape may happen after a physically brutal scene where the husband forces his significant other to engage in sexual relations without wanting to.
- **Forced specific assault:** In this kind of marital rape, husbands utilize just that measure of power, as it is important to constrain their wives. In such cases, battering may not be a trademark and women who reject sex more often than not face such attacks.
- **Obsessive assault:** In fanatical assault, violence includes ruthless torment and additionally unreasonable sexual acts and is most ordinarily brutal in shape. This type of rape has additionally been marked as vicious assault.

### **Historical Background**

Historically, "Raptus",<sup>5</sup> the generic term of rape was to suggest seizure, a fierce robbery, connected to both property and individual. It was synonymous with kidnapping and a woman's abduction or sexual attack, was just the keeping away of a lady against the assent of her guardian or those with lawful control over her. The mischief, ironically, was dealt with as a wrong against her father or husband as women were treated as possessed auxiliaries.

The position of being an exception given to the marital rape as it is not considered as true rape can be understood by explanation given by Sir Matthew Hale, former Chief Justice in

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<sup>3</sup> Berger R.K *Wife Rape: Understanding the response of the survivors and service providers* , Thousand Oaks , CA: Sage (1996).

<sup>4</sup> Morton Hunt, "Legal Rape," *Family Circle* (January 9, 1979), p. 38.

<sup>5</sup> Halliday, Tony. "Oxford." *Oxford*, APA Publications, 2016.

England, amid the 1600s<sup>6</sup>. He mentioned that the husband can't be liable of a rape committed without the aid of anyone else upon his legitimate wife, for by their shared wedding assent and submission, the wife hath given herself in kind unto the husband, from whom she can't withdraw.

Humankind is said to be standing on two pillars, namely a husband and a wife as a couple, who are supposed to be equal partners and go through all thick and thins together. Despite this assumed partnership women have dependably been subjected to a considerable measure of mortification by men, rape is a well-suited case of the abominations submitted against the nobility of women. The offense of Rape is a standout amongst the grimmest and primitive violations executed against women. Marital Rape, however not characterized as a wrongdoing, in India is an exception amongst the most easy to refute and disparate issues. Women have been dealt with as a question of joy and pleasure since time immemorial and the non-criminalisation of marital rape validates the prevalence of such social conditioning till date. Women have been casualties of wrongdoings like rape, homosexuality, inappropriate behaviour, female foeticide and so forth. Lately, where the overall population is battling for the equality in rights for the two people of different sex the rate of wrongdoing against women is multiplying.

India on one hand is concentrating on insurance and anticipation of wrongdoings against women on the other hand it neglects to shield a wedded lady from her rapist who obviously in such cases is her significant other, by not having any legitimate arrangements recognizing marital rape as a wrongdoing.

The wife's part has customarily been comprehended as tame, meek and that of a homemaker. Sex has been dealt with as compulsory ingredient in a marriage and furthermore a forbidden one. At least talking and discussing about it straightforwardly, consequently, the perception and acceptance of sex is still seen as having a very limited role for either kids or male pleasure. With the ladies being nourished to be the ideal wife and told to discreetly serve and not wash messy material out in the open, notwithstanding guiding stays distant.

### **Effects of Marital Rape**

Marital Rape adversely affects a woman in multiple ways. Research demonstrates that marital rape has more extreme and disturbing outcomes for women as a result of the basic truth that the attacker is none other than her better half with whom she had anticipated that she would spend a lifetime of joy.

The impacts of marital rape can be comprehensively ordered into two classes:

Physical impacts – The physical impacts of marital rape incorporate wounds to private organs, torn muscles, cuts, weariness, cracks and so forth to women who are subjected to

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<sup>6</sup> Rath, Priyanka. "Marital Rape and the Indian Legal Scenario." *India Law Journal*, Symbiosis Law School.

physical brutality and in addition assault experience the ill effects of these assaults like darkened eyes , broken bones, and wounds delivered by any kind of a weapon, amid sexual savagery. Women likewise experience some gynaecological issues because of conjugal assault like unnatural birth cycles, contaminations, and furthermore the possibility of contracting of different sexually transmitted maladies like HIV and so on.

Mental impacts – The injury women experiences when her own husband over and again assaults her cannot be clarified in words. The mental impacts are far more terrible than the physical impacts, a portion of the transient mental impacts are shock, fear , post awful pressure , self-destructive propensities and so forth the long haul impacts incorporate dietary issues, gloom , sexual brokenness and so on. Conjugal assault disfavours the holiness of marriage. Marital assault is abusive behaviour at home and isn't reasonable based on consent.

### **Data analysis**

The information published under the ongoing National Family Health Survey now called NFHS-4<sup>7</sup>, which gets specialized direction from the Ministry of Health and Family Welfare, should compel the Centre to re-examine its situation regarding the matter. The data analysis reveals some disturbing facts and figures regarding the marital rape in India.

- Marital Rape is an across the board issue in India. As indicated by a 2018 National Family Health Survey, in excess of 80 percent of wedded ladies who have encountered sexual brutality named their present mate as the culprit.<sup>8</sup>
- The NHFS-4 reports that 31% of wedded ladies (almost one out of three) have been oppressed to physical, sexual and passionate brutality on account of their life partner. In spite of the fact that the extent of wedded ladies enduring physical and sexual viciousness because of their spouses has descended from 37% out of 2005-06 to 29% out of 2015-16, it is as yet a perilously high figure.<sup>9</sup>
- The study likewise expresses that 83% of wedded ladies between the ages of 15 and 49 who have ever endured sexual manhandle refer to their present husband as the culprit, while 7% allude to a previous life partner.<sup>10</sup>
- As per NFHS-4 data, just an insignificant 14% look for outer help when subjected to brutality by her better half, which is down from 24% announced in the past overview, and this is correctly why ladies who endure rape because of their spouses because it requires a law.<sup>11</sup>
- Notwithstanding all the proof pointing towards criminalizing marital rape, the reality remains that 42% of men and 52% ladies trust that spouses are advocated in releasing viciousness on ladies, including if the wife declines to take part in sex, as indicated by

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<sup>7</sup> “National Family Health Survey.” *National Family Health Survey*

<sup>8</sup> “National Family Health Survey.” *National Family Health Survey*

<sup>9</sup> “National Family Health Survey.” *National Family Health Survey*

<sup>10</sup> “National Family Health Survey.” *National Family Health Survey*

<sup>11</sup> “National Family Health Survey.” *National Family Health Survey*

NFHS-4. This is a pointer of how the issue isn't only about the law, but in addition of a lack of our evolving our society and mind-sets.<sup>12</sup>

### **International Perspective**

Rape laws in India proceed with the male centric attitude of viewing females as the property of men post marriage with no independence or authority over their bodies. Marital rape has been denounced in roughly 106 nations and is recorded as a profaning of human rights. Among the 106 nations, 32 nations think about it as an extraordinary criminal offense, and the rest of the 74 incorporated it in the general rape legal framework.<sup>13</sup>

Numerous nations around the globe have criminalized marital rape. Poland was one of the prime nations to criminalize it in 1932. Scandinavian nations, Australia, the United States, the United Kingdom, New Zealand, and South Africa, among different nations crosswise over various landmasses, took action accordingly. Even Nepal, our neighbour, criminalized it in 2002. The Supreme Court of Nepal pronounced that marital sex without a wife's consent ought to be thought about as a rape.<sup>14</sup>

Some other countries and their take on marital rape are as follows:

#### The U.S.A

Rape is characterized as any non-consensual sex between non-companions and it has been utterly unlawful. In any case, until 1975, each state had a "marital exception" that enabled a husband to rape his better half without dread of lawful `outcomes. By 1993, to a great extent in light of the womens' rights and correspondence development, each state and the District of Columbia had passed laws against marital rape. Since 1993, each of the 50 states and DC has instituted laws against marital rape. The main marital exception that still exists in a few states is for statutory rape. All states currently perceive rape inside marriage as a wrongdoing, and most charge the wrongdoing similarly that rape for outsiders of marriage would be charged as.<sup>15</sup>

#### The U.K.

The marital rape exclusion was abrogated in England and Wales in 1991 by the Appellate Committee of the House of Lords, on account of R v R<sup>16</sup>. The exclusion had never been a control of statute, having first been proclaimed in 1736 in Matthew Hale's History of the

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<sup>12</sup> "National Family Health Survey." *National Family Health Survey*.

<sup>13</sup> Wangchuk, Rinchen Norbu. "Survey Takes Veil Off Marital Rape in India: Its Time We Had a Serious Discussion." *The Better India*, The Better India, 16 Mar. 2018.

<sup>14</sup> Wangchuk, Rinchen Norbu. "Survey Takes Veil Off Marital Rape in India: Its Time We Had a Serious Discussion." *The Better India*, The Better India, 16 Mar. 2018.

<sup>15</sup> Steiner, Monica. "Marital Rape Laws." *criminal defense lawyer*, Nolo, 8 Mar. 2017

<sup>16</sup> R v R [1991] UKHL 12

Pleas of the Crown, where Hale expressed<sup>17</sup>: But the husband can't be blameworthy of a rape committed without anyone else's input upon his legitimate wife, for by their common wedding assent and get the wife hath surrendered herself in this kind unto her significant other which she can't withdraw. Comparing revision to the statutory law was made through Section 147 of the Criminal Justice and Public Order Act, 1994<sup>18</sup>. This judgment was likewise asserted by the European Court of Human Rights in the choice of *SW v. UK*<sup>19</sup>.

### Australia

The laws in Australia have also accepted the concept of marital law. As under Section 73(4) of the Criminal Law Consolidation Act, 1953 provides “No person shall, by reasonably of the fact that he is married to some other person, be presumed to have consented to an indecent assault by that other person.”<sup>20</sup>

### South Africa

South Africa has also accepted the concept of marital rape by repealing the exemption on rape by spouse. The law says “Notwithstanding anything to the contrary contained in any law or in common law, a husband may be convicted of the rape of his wife.”<sup>21</sup>

## **Legal Framework in India**

### Constitution of India

Article 14 of the Indian Constitution<sup>22</sup> keeps state from separating among the nationals on any ground, however with respect to characterizing marital rape as a crime the State victimizes women.

Article 21 of the Indian Constitution<sup>23</sup> incorporates the privilege to live with individual freedom and pride however in the event that a female is commandingly requested to have a sex with her husband then the legitimacy of her entitlement to practice her own freedom is faulty and her poise is influenced. Exception to Section 375 of Indian Penal Code disregards this right given to all females.

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<sup>17</sup> Hale, Matthew, et al. *Historia Placitorum Coronae: the History of the Pleas of the Crown*. William S. Hein, 2007.

<sup>18</sup> Participation, Expert. “Criminal Justice and Public Order Act 1994.” *Legislation.gov.uk*, Queen's Printer of Acts of Parliament, 3 Nov. 1994

<sup>19</sup> *SW v The United Kingdom* ECHR 22 Nov 1995

<sup>20</sup> Section 73(4), Criminal Law Consolidation Act, 1953.

<sup>21</sup> Section 5, Family Violence Act 1993.

<sup>22</sup> Constitution of India, 1950.

<sup>23</sup> Constitution of India, 1950.

Article 51A (e) of the Indian Constitution<sup>24</sup> expresses that the basic obligation of each Indian Citizen to revoke rehearses disdainful to the nobility of ladies.

### Indian Penal Code, 1860

According to exemption of Section 375 of Indian Penal Code, a wedded female underneath the age of 15 years has a privilege to affirm her better half against the charge of conjugal assault if her significant other powers her to have sex with him without her assent or will. The inquiry emerges that why this privilege abridged is after she has accomplished the age of 15 years. Being in a marriage does not give the male the power or expert to command the female and satisfy his sexual needs. The article does not give sensible grouping to this segregation inside the sexual orientation.

Also, this special case under section 375 of the Indian Penal Code, 1860 is in itself conflicting in light of the fact that according to the Hindu Marriage Act 1955, Section 5 (c) (iii) the legitimate age for a female to marriage is 18 years and a child marriage is voidable marriage.

### Protection of Women from Domestic Violence Act, 2005

It somehow tries to offer common solutions for crimes against women including marital rape; it gives protection against domestic violence behaviour at home and sexual perversions.<sup>25</sup> It is very inadmissible that viciousness against ladies ought to be viewed as a civil wrong as opposed to criminal offense. In the event that marital rape is made into a criminal wrong then it would act like an obstacle and counteract future violations.

### Indian Evidence Act, 1872

Under Section 122 of this Act it ensures the correspondence of a couple amid marriage a privileged communication. In this manner, the couple is blocked from unveiling any issues between them in court, with the exception of when one wedded accomplice is being mistreated for an offense against the other. Since, marital rape isn't an offense, the proof is prohibited, albeit pertinent, except if it is an indictment for battery, or some related physical or mental manhandle under the arrangement of mercilessness. It has been seen that demonstrating the offense of marital rape is just about an outlandish errand due to these compels set forward by the Evidence Act.

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<sup>24</sup> Constitution of India, 1950.

<sup>25</sup> Peter Foster, *India outlaws wife-beating and marital rape*, THE TELEGRAPH, Oct 27, 2006

In the 42nd Report by the Law Commission<sup>26</sup> it was prescribed that criminal liability ought to be connected to intercourse of man with his minor spouse. Nonetheless, the Committee declined the suggestion expressing that spouse can't be blameworthy of assaulting his better half of whatever age since sex is a part of marriage. In 1983 with expanding the scope of Section 376A IPC, rape of judicially isolated spouse was criminalized.

#### Justice J.S. Verma Committee Report:

It prescribed that exemptions permitting marital rape ought to be repealed. It additionally incorporated that marriage or a private relationship ought not to be alleviating factor in diminishing sentences for rape.<sup>27</sup> Till now, this has been the main significant proposal made by any of the board on conjugal assault.

The postponement in the recognizing conjugal assault as a wrongdoing is blame on part of the Indian Judicial System, there is prompt need to criminalize conjugal assault in India. It disregards the essential privileges of ladies ensured by the Constitution of India.

#### **Evolution of Indian Perspective**

Despite the fact that numerous nations around the globe have made such strong and dynamic strides about marital rape, India is one of the 36 nations where it is as yet not a criminal offense. The subject of marital rape is under open investigation. Calls to criminalize marital rape have approached from women' rights gatherings, common nationals and even a few legislators. Having said that, there is as yet extraordinary protection from this suggestion from the decision government, lawmakers over a plenty of political gatherings spoke to in Parliament, and even the Apex court.

Haribhai Parthibhai Chaudhary, a Union minister, in a composed answer in the Parliament, in 2015 said that, It is viewed as that the idea of marital rape, as saw globally, can't be reasonably connected in the Indian setting because of different variables, including level of training, absence of education, neediness, horde social traditions and qualities, religious convictions, the mentality of the general public to regard the marriage as a holy observance.<sup>28</sup> Reverberating a comparable line of thought, Maneka Gandhi, the Women and Child Development Minister, summarized Chaudhary's statement in 2016, in her composed reaction to the Rajya Sabha.<sup>29</sup>

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<sup>26</sup> Latestlawsteam. "Law Commission Report No. 42- Indian Penal Code." *Latest Laws*

<sup>27</sup> Kudrat. "Marital Rape: The Need for Criminalisation in India." *Academike*, 4 Feb. 2015

<sup>28</sup> Press Trust of India. "Marriage Sacred in India, so Marital Rape Cannot Be Applied: Centre." *The Indian Express*, Thursday, May 03, 2018, 30 Apr. 2015

<sup>29</sup> Sen, Rajyasree. "Maneka Gandhi Tells Us Marital Rape Isn't Rape after All." *Livemint*, 14 Mar. 2016

Lawmakers utilize consequences of research contemplates as a reason against making marital rape an offense, which shows that numerous survivors of marital rape, report streak back, sexual brokenness, enthusiastic torment, even a very long time out of the brutality and more awful, they in some cases keep living with the abuser. Thus, even the most recent report of the Law Commission has wanted to stick to its prior supposition of non-acknowledgment of rape inside the obligations of marriage all things considered an arrangement may sum top over the top impedance mind the marital relationship.

In the recent time we have witnessed some cogent steps and discussions that give us hope about a better, changing face of India. The Justice JS Verma Committee, constituted by the Centre after the terrible 2012 Nirbhaya gang rape occurrence, to change and fortify the counter assault law talked on the issue. It contended that the “relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity.”

Regardless, marriage doesn't add up to volunteered sexual assent constantly to come. Justice Leila Seth clarifies this in her book, *Talking of Justice, People's Rights in Modern India*, saying “A woman’s autonomy and bodily integrity are concepts that have developed over the years, thus making rape an offence unless there is true consent.”<sup>30</sup>

Justice J.B. Pardiwala of the Gujarat High Court was presiding over a case including a lady who'd blamed her significant other for sexually assaulting as he conveyed his choice, Paridwala communicated daunt at the constraints of the law. He supported for the criminalization of marital rape, saying that banning non-consensual sex in a marriage is the “first necessary step in teaching societies that dehumanized treatment of women will not be tolerated.” “Marital rape is not a husband’s privilege, but rather a violent act and an injustice that must be criminalized,” he included.<sup>31</sup>

In a much needed development, Additional Sessions Judge Kamini Lau held that non-acknowledgment of marital rape is false reverence. In a specific case, while denying safeguard to a man blamed for assaulting his significant other, she worried on the requirement for a law to think about conjugal assault as a genuine offense. She said that, “Non recognition of marital rape in India, a nation set up upon the bedrock of equality, is gross double standards and hypocrisy in law which is central to the subordination and subjugation of women”<sup>32</sup>

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<sup>30</sup> Wangchuk, Rinchen Norbu. “Survey Takes Veil Off Marital Rape in India: It’s Time We Had a Serious Discussion.” *The Better India*, The Better India, 16 Mar. 2018

<sup>31</sup> Mosbergen, Dominique. “Marital Rape Is Not A Crime In India. But One High Court Judge Is Pushing For Change.” *HuffPost India*, HuffPost India, 5 Apr. 2018.

<sup>32</sup> Khan, Saif Rasul. “MARITAL RAPE: THE BITTER TRUTH.” *International Journal of Law and Legal Jurisprudence Studies*, vol. 2, no. 4.

## Recommendations

As Al Anon said, “If you don’t like being a doormat then get off the floor.”<sup>33</sup> Women experiencing such abuse ought to have the valour to face it. The general public all in all should remain with women confronting such torment and offer them their full help as opposed to excluding them.

Conjugal assault is a grave infringement of human rights and not only a wrongdoing of passion. Section 375 of IPC ought to be amended by the Indian Parliament. Further, Section 376E ought to be added to portray the discipline particularly for conjugal assault as prescribed in 172nd Law report.<sup>34</sup> Repealing of Section would edify the nationals and would counteract conjugal assault in future.

Not just this, spouse ought to have an alternative of getting an announcement of separation if the charge of conjugal assault is demonstrated against her better half. Despite the fact that an instance of conjugal assault may fall under 'cruelty' as a ground of separation, it is fitting to have the legitimate position cleared up. Despite the fact that the interest for separation ought to be at the watchfulness of the spouse, yet in the event that the wife does not have any desire to turn to separation and needs to proceed with the marriage then the marriage ought to be permitted to proceed. This would demonstrate a hindrance for the future offenders.

Marital rape ought to be perceived as an offense under the Indian Penal Code. The discipline for conjugal assault ought to be the same as the one endorsed for assault under Section 376 of the Indian Penal Code. The absence of obstruction with respect to the spouse ought not to fill in as a guard to the charge. The lawful position of conjugal assault ought to be perceived as well as obviously characterized; it should frame a legitimate ground for separate for the spouse. Aside from legal arousing, general attention to such offense by the residents is likewise vital.

## Conclusion

*“A women with a voice is by definition is a strong woman. But the search to find that voice can be remarkably difficult.”<sup>35</sup> - Melinda Gates*

Rape is a standout amongst the most severe types of infringement of women’s privacy and respectability. The uneasiness around the issue of acknowledging and criminalising marital rape shows the state's hesitance to enable ladies to claim their sexuality. Further, by persistently asserting that making marital rape would unfavourably affect the organization of the family in the nation, lawmakers at a slant admit to the way that they only from time to

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<sup>33</sup> *Courage to Change: One Day at a Time in Al-Anon II*. Al-Anon Family Group Headquarters, 1992.

<sup>34</sup> Badapbiang T. Dkhar, *Protecting India’s Woman: The need for Criminalization of Marital rape and Criminal Amendment Act, 2013*, Alexis Journal of Public Policy and Law, Vol 1 Issue 1.

<sup>35</sup> Kudrat. “Marital Rape: The Need for Criminalisation in India.” *Academike*, 4 Feb. 2015

time take a gander at women as a huge voting bunch in their own right. A marriage involves fiduciary relationship and when a spouse practicing sexual predominance, by getting it on request and through any methods conceivable, it is not reflective of a happy marriage. Astonishingly, this isn't, so far, in any law book in India. In the wake of expanding assaults in the nation, the rape laws were changed in 2013 on the suggestions of the Justice J.S. Verma Committee Report. One of the greatest lacunae that exist in the criminal law of India is the non-criminalisation of marital rape. Marital Rape isn't criminalized as it is trusted that in a marriage, there is inferred assent. Be that as it may, assault is still assault despite the fact that the gatherings are in the response of a couple. Numerous nations have discarded the special case of marital rape in their corrective statutes. This has been suggested in India also by the Law Commission and the Justice Verma Committee. Be that as it may, no concrete move has been made yet and a strong judicial decision and legal framework is awaited.