

CONSENT DOESN'T END AT THE WEDDING

DEBUNKING
MYTHS AND
CHALLENGES
AROUND
CRIMINALISING
MARITAL RAPE
IN INDIA



ABOUT MAYA

MAYA is a student-run organisation dedicated to raising awareness about sexual violence through education, dialogue, and survivor-centred advocacy. We believe that meaningful prevention begins with knowledge, and that every child and young person must be empowered to recognise violations, understand consent and bodily autonomy, and feel safe to report abuse. Our work is guided by the values of dignity, accessibility, and accountability, and aims to break the silence and stigma that often surround conversations on sexual violence.



Through workshops and awareness programmes, MAYA has worked with over 2,000 students across 40+ schools, colleges, orphanages, and residential spaces, addressing issues such as sexual harassment, child sexual abuse, and online abuse. To make mental health support more accessible, we have spearheaded a free therapy programme and developed easy-access guides on understanding child sexual violence and responding to disclosures. We have also partnered with organisations such as Rotaract and IDIA to expand our outreach and advocacy.

This report is an independent research and advocacy publication intended to inform the public, guide policymakers, and contribute to evidence-based conversations on marital sexual violence and legal reform. The views and recommendations expressed are grounded in constitutional principles, empirical data, and comparative legal analysis, and any errors or omissions remain solely the responsibility of the authors and MAYA.

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EXECUTIVE SUMMARY

Marital rape remains immune from criminal accountability in India due to various social and cultural stereotypes and legal challenges. This Report addresses common myths used to oppose criminalisation: *that sex is a husband's right, that marital rape is a private matter, that criminalisation will break families, that women will misuse the law, and that existing remedies are sufficient.*

It demonstrates that these claims lack constitutional, empirical, and comparative backing. **Concerns about misuse are overstated**, as false cases constitute a small minority, while conviction gaps largely reflect evidentiary and systemic failures rather than fabricated complaints.

Comparative analysis shows that 77 countries have criminalised marital rape, including the UK, USA, Canada, and South Africa, treating it as a public wrong irrespective of the relationship. The report also addresses evidentiary concerns, demonstrating that **marital rape is not “impossible to prove” and can be investigated using survivor testimony, contextual evidence, and trauma-informed procedures, already applied in non-marital rape cases globally.**

Finally, the report recommends repealing the marital rape exception, aligning criminal law with constitutional morality, and complementing legal reform with public awareness campaigns to dismantle rape culture and challenge norms equating marriage with consent.



INTRODUCTION

In December 2025, a Private Member's Bill was introduced in the Lok Sabha, [the Bharatiya Nyaya Sanhita (Amendment) Bill, 2024 (Amendment of section 63)],¹ which protects the fundamental right of a woman to bodily autonomy and dignity within marriage through the criminalisation of marital rape. Reactions to the bill were mixed, which reignited the debate about marital rape. Advocates for gender justice and women's rights groups backed the bill, arguing that it would uphold constitutional principles like equality and dignity.² However, it was not well received by men's rights organisations and other conservative voices, who called the bill "anti-men" due to worries about possible misuse of the law, interference with marital privacy, and threats to family stability.

Although the Criminal Law (Amendment) Act, 2013, also known as the "Nirbhaya Act", succeeded in creating a standardised framework on rape and sexual violence, sexual violence by a husband remains excluded.

Marital rape, or spousal rape, is a form of sexual assault against a spouse or an ex-spouse against their will or without their consent. Marital rape has often been defined as '*a method of continual and enforced domination*',³ and yet, Section 63 of the Bharatiya Nyaya Sanhita defines rape, and the second exception states, "*Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape*".⁴ Although the Criminal Law (Amendment) Act, 2013,⁵ also known as the "Nirbhaya Act", succeeded in creating a standardised framework on rape and sexual violence, sexual violence by a husband remains excluded.

1 Times of India, No Means No: Shashi Tharoor Introduces Bill to Criminalise Marital Rape, Says India Must Move to Only Yes-Means-Yes (Dec. 5, 2025), <https://timesofindia.indiatimes.com/india/no-means-no-shashi-tharoor-introduces-bill-to-criminalise-marital-rape-says-india-must-move-to-only-yes-means-yes/articleshow/125791388.cms> (last visited Feb. 10, 2026).

2 The Logical Indian, What Is the Use of Being the Fourth-Largest Economy If Women Are Not Safe? Shashi Tharoor's Question That India Can't Ignore (Jan. 8, 2026), <https://thelogicalindian.com/what-is-the-use-of-being-the-fourth-largest-economy-if-women-are-not-safe-shashi-tharoors-question-that-india-cant-ignore/> (last visited Feb. 10, 2026).

3 The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 63 (IND), https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00048_2023-45_1719292564123&orderno=63 (last visited Feb. 10, 2026).

4 Ishani Mookherjee & Mahek Bhatia, Discarding the Marital Rape Exemption: From Fundamental Rights to Vulnerability Theory, Oxford Human Rights Hub (Mar. 27, 2025), <https://ohrh.law.ox.ac.uk/discarding-the-marital-rape-exemption-from-fundamental-rights-to-vulnerability-theory/> (last visited Feb. 10, 2026).

5 Ministry of Home Affairs, Government of India, The Criminal Law Act, 2023 (India) (Feb. 27, 2023), https://www.mha.gov.in/sites/default/files/2025-11/1CSdivTheCriminalLawAct_27022023.pdf (last visited Feb. 10, 2026).



The marital rape exception is a colonial product based on Victorian values of sexual morality and family ideology, which made marital rape both legally and socially acceptable. This understanding is rooted in English common law. Sir Matthew Hale, a former Chief Justice of the Court of King's Bench in England and a seventeenth-century English jurist, wrote that “the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract,” thereby confirming the idea of irrevocable consent within marriage.⁶ William Blackstone further reinforced this logic through the idea of the “unity of person,” where husband and wife are legally one, taking marital rape outside the scope of rape laws.⁷ The criminalisation of homosexuality was also a colonial product shaped by Victorian ideas of morality, which the Supreme Court later recognised and removed.⁸ The marital rape exception is rooted in the same outdated understanding of sexuality and marriage, and deserves to be confronted and discarded in the same way.

A pivotal moment in this discourse came on the 23rd day of March 2022, when a single-judge bench of Justice M Nagaprasanna in *Hrishikesh Sahoo v. State of Karnataka*, recognised the marital rape exception to be violative of the right to equality.⁹ The Union government's stand, in *Hrishikesh Sahoo*, is that criminalising marital rape disturbs the sanctity of marriage. The Union government also argued that punitive measures against the husband in such cases may lead to destitution and vagrancy for the wife and dependent children, and that alternative legal remedies already exist under the Protection of Women from Domestic Violence Act, 2005.

⁶ P. K. Chaturvedi, A Legal History of Marital Rape: The Erosion of Anachronism, *Indian J.L. ; Just.* 122 (2010), <https://ir.nbu.ac.in/bitstreams/34f01803-9fc2-4cc4-9f20-410fe741acc5/download> (last visited Feb. 10, 2026).

⁷ William Blackstone, *Commentaries on the Laws of England* bk. 4, ch. 15 (1769), https://avalon.law.yale.edu/18th_century/blackstone_bk4ch15.asp (last visited Feb. 10, 2026).

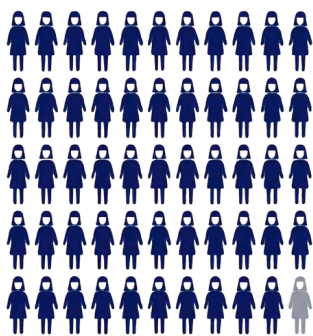
⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

⁹ *Hrishikesh Sahoo v. State of Karnataka*, Crim. Petition No. 11322 of 2021 (Karn. H.C.), ¶¶ 22–27 (hereinafter “*Hrishikesh Sahoo*”).



While acknowledging that the husband's actions may be wrongful, the Union contended that treating such conduct at par with non-marital rape would be “excessively harsh”.

It maintained that the case of a married woman and her husband cannot be treated similarly to other cases, as a breach of consent within marriage results in consequences different from those of rape outside marriage, and that not all violations of consent qualify as rape. While acknowledging that the husband's actions may be wrongful, it contended that treating such conduct at par with non-marital rape would be “excessively harsh”.



99% OF CASES GO UNREPORTED

While the judgment marks an important doctrinal shift, examining empirical evidence exposes how deeply entrenched and largely invisible sexual violence within marriage remains. The NFHS 5 data revealed that more than 29% of Indian women (aged between 18 and 49) have experienced domestic violence at some point in their lives.¹⁰ However, the situation is exacerbated by the gross underreporting of marital rape. A working paper, based on a comparison of NFHS and NCRB data, indicated that less than 1% of cases of sexual violence by husbands are reported to the police.¹¹ There is a grave underreporting of marital rape due to social stigma, economic dependence, and lack of social support. But the concerning reason behind this silence is the failure to identify marital rape itself, as many women are not aware of their rights and bodily autonomy. This prevents women from recognising sexual violence within marriage and seeking justice.

Further, Articles 14 and 21 provide Constitutional safeguards against marital rape by guaranteeing equality before the law and the right to life and personal liberty. The Justice Verma Committee, formed after the Nirbhaya gang rape, explicitly recommended the criminalisation of marital rape, asserting that the marital bond between the survivor and the perpetrator should not shield the latter from crimes of rape.¹² Despite this, Parliament chose not to intervene, instead advocating extra-legal solutions to “solve issues between couples”.¹³

¹⁰ Int'l Inst. for Population Scis. (IIPS) ; ICF, National Family Health Survey (NFHS-5), India National Fact Sheet (2019–21) (The DHS Program 2021), https://dhsprogram.com/pubs/pdf/OF43/India_National_Fact_Sheet.pdf (last visited Feb. 10, 2026).

¹¹ Padma-Bhate Deosthali, Sangeeta Rege ; Sanjida Arora, Women's Experiences of Marital Rape and Sexual Violence Within Marriage in India: Evidence from Service Records, 29 Sexual & Reproductive Health Matters 2048455 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8967187/> (last visited Feb. 10, 2026).

¹² PRS Legislative Research, Justice Verma Committee Report Summary (Jan. 15, 2024), <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary> (last visited Feb. 10, 2026).

¹³ Swarati Sabhapandit, Criminalising Marital Rape in India, The India Forum (Aug. 1, 2023), <https://www.theindiaforum.in/law/criminalising-marital-rape-india> (last visited Feb. 10, 2026).



This oversight, by not criminalising marital rape, has failed to clarify the boundaries of consent within marriage, which denies equal protection in a marriage. While the most common argument raised against criminalising marital rape is the fear of misuse, we calculated that only 6.6% of the cases reported in India are false.¹⁴ This rate cannot justify overlooking such a grave injustice faced by married women. Marriage should not be a shield to be immune from legal regulation, and privacy, even in a marriage, should not protect violence, both physical and mental.

AIM OF THE REPORT

This report critically examines India's continued failure to criminalise marital rape and challenges the social, legal, and constitutional myths used to justify this exclusion. It demonstrates, through data, jurisprudence, and comparative law, that marriage cannot operate as consent or as a shield against sexual violence. It aims to inform the public, dismantle rape culture, and advocate for legal reform that recognises marital rape as a serious crime, demanding criminal accountability.

STRUCTURE OF THE REPORT

Section 1 of this report examines the myths and challenges surrounding marital rape, situating them against constitutional principles and existing legal realities. It also draws on global best practices to counter these myths with evidence and facts, challenging the normalisation of sexual violence within marriage.

Section 2 advances policy and legal recommendations, including institutional and infrastructural measures such as investigation guidelines, survivor protection mechanisms, and sensitisation frameworks, along with legal reforms aimed at amending existing legislation to remove the marital rape exception.

Finally, Section 3 presents a roadmap for change, outlining pathways to reform by defining the roles and responsibilities of the government, civil society, media, and the general public in addressing and eradicating marital rape.

¹⁴ For the calculation, see p. 11.



MYTHS/ CHALLENGES VERSUS REALITY

This section examines the most common myths and challenges invoked to oppose the criminalisation of marital rape, including claims about marital rights, privacy, family breakdown, misuse of law, and evidentiary difficulty. It juxtaposes these arguments with constitutional principles, global best practises, empirical data, and judicial reasoning to expose how these narratives normalise sexual violence within marriage. We also show that these challenges are neither unique nor insurmountable.

MYTH 1: SEX IS A HUSBAND'S RIGHT IN MARRIAGE.

The belief that sex is a husband's right within marriage rests on the assumption that marriage constitutes permanent and unconditional consent by the wife. This is evident from a 2023 Karnataka HC judgement (which also cites a 2014 Supreme Court Judgement), which held that the denial of sexual relations "without sufficient or valid reason" amounts to mental cruelty and can be grounds for divorce.¹⁵ This notion is embedded in patriarchal social norms that make marriage a union of unequal partners and frame sex as a *matrimonial duty* owed within marriage. Forced sex within marriage is often normalised as marital authority and justified as discipline or a means of ensuring fidelity. A wife's refusal is framed as moral failure rather than an expression of bodily autonomy or consent.¹⁶

FACT: MARRIAGE IS NOT CONSENT, AND SEXUAL AUTONOMY EXISTS IN MARRIAGE.

For 163 years, Indian law has treated rape within marriage as a legal impossibility, premised on the fiction that a wife gives *irrevocable consent* at the time of marriage. Marriage, however, does not dissolve a woman's subjectivity, nor is it a mechanism to diminish their fundamental rights. Under criminal law, consent is specific, ongoing, and revocable, and it cannot be presumed merely on the basis of marital status. The marital rape exception, which assumes non-revocable consent, stands in direct conflict with Articles 14 and 21 of the Constitution, which guarantee equality before the law and the right to live with dignity.

¹⁵ Shri Dharmendra S. N. v. Smt. Chaya Kumari, MFA No. 2348 of 2021 (Karn. H.C. 2021); Vidhya Vishwanathan v. Kartik Balakrishnan, Civil Appeal No. 9036 of 2014 (India 2014).

¹⁶ Diksha Sanyal ; Namrata Mukherjee, Why Making Marital Rape a Crime Is Unlikely to Provide Married Women the Legal Backing to Say No to Forced Sex, ARTICLE 14 (June 23, 2023), <https://article-14.com/post/why-making-marital-rape-a-crime-is-unlikely-to-provide-married-women-the-legal-backing-to-say-no-to-forced-sex-6494ffaa66bab> (last visited Feb. 10, 2026).



Statutory frameworks such as the Protection of Women from Domestic Violence Act 2005 and Section 498A of the Indian Penal Code further reject the idea that sex is a matrimonial duty owed within marriage.

In multiple judgements, like the Gujarat High Court in *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, the judiciary has acknowledged marital rape as a serious and persistent social reality that requires legislative intervention.¹⁷ Constitutional jurisprudence has consistently located bodily autonomy within Article 21.¹⁸ In *T. Sareetha v. T. Venkata Subbaiah*, the Andhra Pradesh High Court rejected the notion that marriage transfers sexual choice, clearly stating that “no positive act of sex can be forced upon an unwilling person.”¹⁹ Statutory frameworks such as the Protection of Women from Domestic Violence Act 2005 and Section 498A of the Indian Penal Code further reject the idea that sex is a matrimonial duty owed within marriage.²⁰

MYTH 2: MARITAL RAPE IS A PRIVATE MATTER.

Marital rape is often dismissed as a private matter situated within the domestic sphere and therefore treated as beyond the legitimate reach of law. This belief relies on a rigid separation between the public and the private, where the family is imagined as an autonomous unit insulated from state intervention. Judicial reasoning has frequently reproduced this logic by invoking marital privacy to avoid addressing violations of women's rights within marriage. In *Harvinder Kaur v. Harmander Singh*, the Delhi High Court warned that introducing constitutional law into marriage would disturb domestic harmony, asserting that marriage rests on “moral cement” rather than constitutional principles.²¹

¹⁷ *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, 2017 SCC, OnLine Guj 1386

¹⁸ The Constitution of India art. 21 (India).

¹⁹ *T. Sareetha v. Venkata Subbaiah*, AIR 1983 AP 356.

²⁰ Diksha Sanyal ; Namrata Mukherjee, Why Making Marital Rape a Crime Is Unlikely to Provide Married Women the Legal Backing to Say No to Forced Sex, ARTICLE 14 (June 23, 2023), <https://article-14.com/post/why-making-marital-rape-a-crime-is-unlikely-to-provide-married-women-the-legal-backing-to-say-no-to-forced-sex-6494ffaa66bab> (last visited Feb. 10, 2026).

²¹ *Harvinder Kaur v. Harmander Singh*, AIR 1984 Del 66.



FACT: THE CLAIM THAT MARITAL RAPE IS A PRIVATE MATTER HAS NO CONSTITUTIONAL BASIS.

Marriage is frequently described as a sacred institution and the bedrock of society and is therefore treated as deeply personal. The state does not compel individuals to marry or divorce, recognising marriage as a matter of personal choice. However, the refusal of the state to enter this private sphere, even where harm is inflicted, is constitutionally indefensible. When a wife is subjected to cruelty within marriage, state intervention becomes necessary to criminalise that harm, failing which women are left without any effective legal remedy. Indian constitutional law has consistently rejected the idea that private spaces are immune from the operation of fundamental rights. In *T. Sareetha v. T. Venkata Subbaiah*, the Andhra Pradesh High Court struck down restitution of conjugal rights on the ground that it violated personal autonomy by transferring sexual choice from the individual to the state, and explicitly recognised that forced sex within marriage offends dignity and bodily integrity.²²

In *Harvinder Kaur v. Harmander Singh*, the Delhi High Court weakened this earlier reasoning.²³ The Court upheld Section 9 of the Hindu Marriage Act²⁴ by saying that the law was meant to preserve marriage as an institution, not to force a couple to live together. It rejected the argument that ordering a woman to return to her husband would force her into sexual relations, stating that marriage involves more than just sex. However, this view ignored real-life realities. Forcing a woman to live with her husband makes it very likely that she will face pressure or force to have sex. By relying on the idea of privacy within marriage, the Court chose not to address this risk. It said that family relationships are governed by moral values, not constitutional rights. As a result, marriage was placed beyond constitutional scrutiny and treated as a policy choice for lawmakers, rather than an area where fundamental rights must be protected.

Feminist legal theory has long demonstrated that the public-private divide enables violence by denying remedies within the family. Indian law already intervenes through Section 498A of the Indian Penal Code and the Protection of Women from Domestic Violence Act 2005, recognising domestic abuse as a public wrong.²⁵

²² *T. Sareetha v. Venkata Subbaiah*, AIR 1983 AP 356.

²³ *Harvinder Kaur v. Harmander Singh*, AIR 1984 Del 66.

²⁴ Hindu Marriage Act, 1955, § 9 (India).

²⁵ See The Protection of Women from Domestic Violence Act, 2005; The Indian Penal Code, 1860, §498A.



In *Justice K. S. Puttaswamy v. Union of India*, the Supreme Court clarified that privacy protects individual autonomy and dignity, not spaces from rights enforcement.²⁶ By construing violence within marriage as a private inconvenience rather than a public wrong, such reasoning renders sexual violence legally invisible, even as the state routinely intervenes in intimate spaces through laws regulating abortion, sexuality, cohabitation, and domestic cruelty. Gujarat's proposed amendment, where adults need to mandatorily seek their parents' consent before registering their marriage, sits in direct contrast with the Union's view that they must not criminalise marital rape as they would be regulating private affairs. More recently, in 2025, Uttarakhand introduced mandatory government registration for live-in couples in the state. However, it met with criticism for infringing upon people's privacy.

Privacy is thus selectively invoked only to shield marital sexual violence, while other marital aspects (cohabitation, for instance) are regulated by the state.

Privacy is thus selectively invoked only to shield marital sexual violence, while other marital aspects (cohabitation, for instance) are regulated by the state. This disproportionately disadvantages sexual and gender minorities, and reinforces the patriarchal and state control in marriage.

MYTH 3: CRIMINALISING MARITAL RAPE WILL BREAK FAMILIES.

The Law Commission of India, in its 172nd Report, rejected criminalisation on the ground that it would weaken the institution of marriage.²⁷ This claim rests on the assumption that preserving marriage is a higher social priority than immunising women from sexual violence. Such reasoning privileges institutional preservation over individual harm and treats women's suffering as an acceptable cost of marital stability. Moreover, the National Commission for Women, India's centralised body to protect women's rights, also argued that *"the consequences of punitive measures against husband may lead to destitution and vagrancy for wife and dependent children due to lack of a robust support system for a victim"*.²⁸ The underlying assumption is that marriage is inherently fragile and that shielding it from legal scrutiny justifies tolerating sexual coercion within it.

²⁶ Justice KS Puttaswamy v. Union of India, 2017 10 SCC 1.

²⁷ Law Commission of India, Review of Rape Laws, Report No. 172 (March 2000)

²⁸ Union Counter-Affidavit on Marital Rape, Hrishikesh Sahoo, ¶19.



FACT: REPORTING A CRIME DOES NOT BREAK A FAMILY; COMMITTING IT DOES.

Indian law does not treat marriage as an institution immune from regulation or accountability. Legal reforms concerning property rights, divorce, and the recognition of equal status between spouses have dismantled ownership-based models of marriage, rejecting any presumption that marital status confers absolute authority over a partner. In *Independent Thought v. Union of India*, the Supreme Court explicitly rejected marriage as a reasonable classification to permit sexual relationships with children who have been married off, holding that bodily integrity cannot be overridden by marital status.²⁹

This reasoning directly challenges claims that marriage can justify suspending consent. The state has consistently affirmed that protecting the institution of marriage cannot legitimise harm. Section 498A of the Indian

Courts have repeatedly held that cruelty constitutes a legitimate ground for state intervention.

Penal Code and the Protection of Women from Domestic Violence Act 2005 criminalise cruelty within marriage despite potential impacts on marital stability, reflecting legislative recognition that abuse cannot be tolerated under the guise of family preservation.³⁰

The Chhattisgarh High Court's acquittal of a husband whose forced sexual acts resulted in his wife's death illustrates the consequences of treating marriage as a shield against accountability.³¹ Article 21's guarantee of dignity cannot be subordinated to idealised notions of family stability.³² Moreover, NCW's argument that criminalising marital rape may leave families 'destitute' signals that India needs better survivor-rehabilitation laws, and does not justify not criminalising marital rape.

²⁹ *Independent Thought v. Union of India*, AIR 2017 SC 4904.

³⁰ See The Protection of Women from Domestic Violence Act, 2005; The Indian Penal Code, 1860, §498A.

³¹ *Gorakhnath Sharma v. State of Chhattisgarh*, 2025 SCC OnLine Chh 2287

³² Constitution of India, 1950, Art. 21.

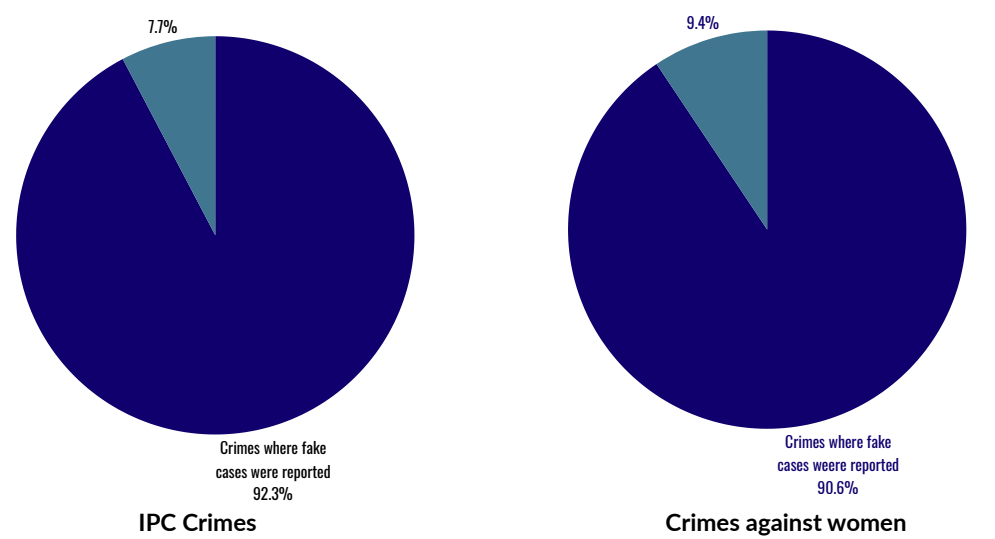


MYTH 4: WOMEN WILL MISUSE THE LAW.

The Central Government, in *Hrishikesh Sahoo v. Union of India*, has argued that allowing marital rape to be criminalised will lead to women misusing the law.³³ Many critics also took to social media to state that, considering how women are already misusing domestic violence laws in India, even marital rape will be misused.

FACT 1: THE POSSIBILITY OF MISUSE IS NOT, BY ITSELF, A REASON TO DECRIMINALISE MARITAL RAPE.

NCRB reports consistently show that misuse of the law is not only specific to sexual or gender-based violence, but also occurs in almost every crime, such as in abetment to commit suicide, murder, hurt, forgery, cheating and fraud, identity theft, environmental laws, SC/ ST Act, crimes against senior citizens and against children.
For instance:



Header of crime	Number of crimes	Number of crimes where fake cases do not exist	Percentage of crimes where fake cases do not exist
IPC crimes	130	10	7.69%
Crimes against women	32	3	9.37%



This demonstrates that the number of false cases in crimes against women is identical to that in offences prosecuted under the IPC at large.

This demonstrates that the number of false cases in crimes against women is identical to that in offences prosecuted under the IPC at large. Yet, there has been no comparable societal or legal demand to dilute, decriminalise, or withdraw protections for IPC offences generally.

The existence of misuse has never been treated as a justification to deny protection to all; individuals continue to be safeguarded by the law despite the possibility of false complaints. Therefore, while we agree that false cases are a violation of the accused's rights, we believe that a more effective and equitable response to the same would be to strictly penalise persons who file false cases.

Regardless, not recognising marital rape as a crime does more harm than good in addressing concerns around misuse of law. Excluding marital rape from criminal liability does not prevent misuse; rather, it creates a blanket immunity that prevents legitimate claims and denies legal remedies to survivors. The absence of criminal recognition shifts the problem away from regulating misuse through procedural safeguards, and places it instead on the blanket denial of protection, resulting in an overbroad and unjust legal response.

FACT 2: WOMEN RARELY MISUSE THE LAW.

A 'false allegation' is when a complainant deliberately fabricates an event that they know actually did not occur.³⁴ However, there is a less-understood distinction between 'false' and 'unfounded' cases. For instance, in 2022, there were 445256 registered cases of crimes against women, whereas only 38136 (8.5%) ended in convictions.³⁵ This means that in 91.5% of cases, it simply could not be proven that the accused has committed a crime. It does NOT mean that survivors were lying. Moreover, in 2019, only 34.9% of all POCSO cases ended in convictions.³⁶ Does this mean that the latter 64.1% of cases are false? No! It simply means that the prosecution was unable to prove that the accused raped a child. While one reason for this may be that the case was filed with malicious intentions, an unproven case does not, by itself, mean a false case.

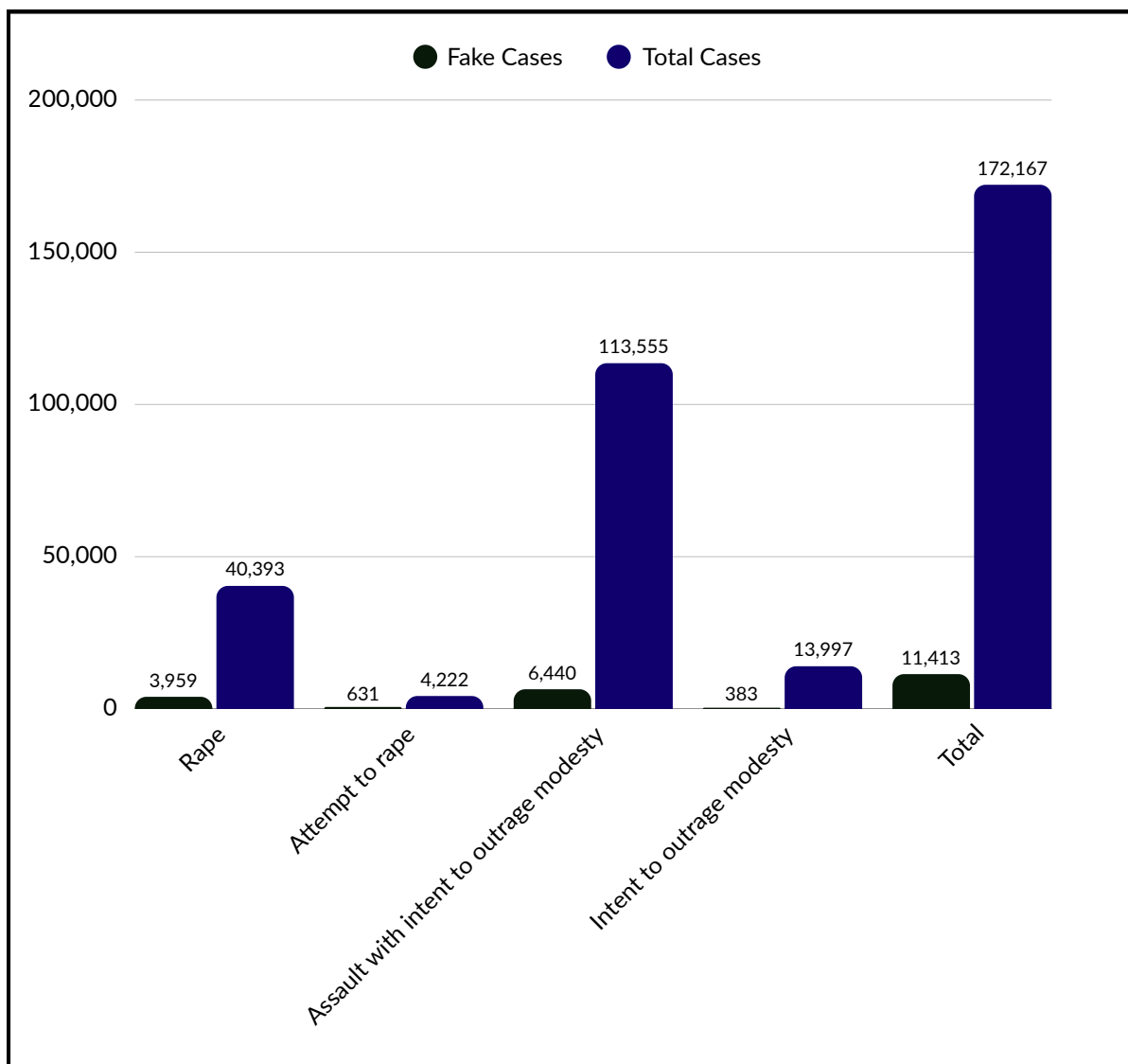
³⁴ Graham A. Norfolk, *Leda and the Swan – And Other Myths About Rape*, 15 J. Forensic ; Legal Med. 235 (2008).

³⁵ India, Lok Sabha, Unstarred Question No. 1251 (answered by Ministry of Home Affairs) (Feb. 11, 2025), <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2025-pdfs/LS11022025/1251.pdf> (last visited Feb. 10, 2026).

³⁶ Ministry of Women ; Child Development, Press Information Bureau, Conviction Rate in POCSO Cases, Press Release PRID 1742825 (Aug. 5, 2021) (India), <https://www.pib.gov.in/PressReleaseFramePage.aspx?PRID=1742825;reg=3;lang=2> (last visited Feb. 10, 2026).



Using data from NCRB (2023, the most-recent version), we calculated that only 6.6% of all rape, sexual assault and assault with the intent to outrage modesty cases were fake.



Crime	Fake Cases	Total Number of cases
Rape	3969	40393
Attempt to rape	631	4222
Assault with intent to outrage modesty	6440	113555
Intent to outrage modesty	383	13997
Total	11413	172167

False Cases: 11,413 of 172,167 (6.67%)



Moreover, while fake rape cases have seen a small rise, it has also decreased in cases of cruelty (S. 498A of the IPC) from 7606 cases to 6176 cases. These numbers are minuscule when compared to actual cases filed; for instance, fake cases formed only 4.6% of all cases of cruelty committed by a woman's husband or relatives. Moreover, cruelty cases have risen from 125298 (2019) to 133676 (2023); at the same time, false cases have fallen from 7606 (2019) to 6176 (2023). This shows that while reporting of cases has increased, false cases have decreased.

It is also worth noting that between 2022 and 2023, fake rape cases have fallen by 8.7% [from 4340 to 3959]. This is a promising number - while fake cases exist, increased awareness can be a deterrent to them. Despite this, it seems that these false allegations cast a skeptical shadow over the words of every woman. This view was also mirrored in the famous *Nimeshbhai Bharatbhai* judgement, where the Gujarat HC stated:

“ 119. I am conscious of the fact that the marital rape may be used as a tool to harass the innocent husbands and this is what of the Parliament is worried about. In this regard, let it be stressed that the safeguards in the criminal justice system are in place to spot and scrutinize fabricated or false marital complaints, and any person who institutes untrue and malicious charges, can be made answerable in accordance with law. However, this fear, by itself, is not sufficient to just ignore the marital rape. ”

Solution: Along with criminalising marital rape, the Government must include proportionate punishment for women or their families when it has been proved that a case was filed with mala fide intentions. There must also be civil remedies such as compensating the accused in such cases. However, cases that cannot be proved should not be deemed as fake cases.



MYTH 5: WOMEN ALREADY HAVE LEGAL REMEDIES UNDER INDIAN LAW

A line of argument against the criminalisation of marital rape states that women already have criminal and civil remedies against marital rape; thus, it would be redundant to separately criminalise it. This was most recently argued by the Union in their counter-affidavit in *Hrishikesh Sahoo*.³⁷

FACT: CURRENT REMEDIES DO NOT ADEQUATELY ADDRESS MARITAL RAPE.

Remedy	Challenges
Protection of Women from Domestic Violence Act, 2005	At the outset, it is worth noting that Indian law provided remedies for domestic violence; however, the instrumentalization of the DV Act was welcomed since it specifically gave the concept of 'domestic violence' legal sanctity. Moreover, this Act is purely civil in nature; it does not provide for imprisonment or fines (unless a Protection Order has been breached, which would be a crime in the second instance). Therefore, a survivor seeking justice, in the form of imprisonment for her abuser, cannot file a case under the DV Act. Also, it does not recognise marital rape itself as a wrong, and clubs it with other forms of violence experienced.
S. 354, 354A and 354B of IPC (S. 74, 75 and 76 of BNS)	"Outraging the modesty of a woman" is an archaic and widely-critiqued standard. Moreover, the punishment under these sections is 1-5 years, significantly less than what it is for rape (10 years - life imprisonment, even extending to the death penalty).
S. 498A of IPC (S. 86 of BNS)	The threshold for conviction under this Section is extremely high, ³⁸ requiring conduct repeated over a period of time by the accused and likely to drive the wife to suicide or cause grave injury or danger to her life, limb or health; or harassment in relation to dowry. ³⁹ Moreover, cruelty does not have a set definition - what amounts to "cruelty" depends from case to case. ⁴⁰ Also, the maximum punishment under S. 498A is 3 years; whereas it is life imprisonment for rape. This stark difference shows that S.498A cannot be a valid substitute for explicitly criminalising marital rape.

³⁸ Union Counter-Affidavit on Marital Rape, Hrishikesh Sahoo

³⁹ Bomma Ilaiah v. State of A.P., 2003 SCC OnLine AP 38

⁴⁰ Samar Ghosh v. Jaya Ghosh, AIR 2007 SC 347



CHALLENGE 1: HOW WILL WOMEN PROVE MARITAL RAPE?

Many critics argue that since marital rape mostly happens in a person's home (inside their rooms, more often), it will not be possible to prove if a person actually consented. This would lead to courts believing survivors' testimony without any corroboration, which could increase false cases.

Solution: At the outset, it is important to note that Indian courts have consistently held that there should be no hesitation in accepting a survivor's testimony, and that such testimony must be presumed credible unless disproved. Further, data from the NCRB (2023) indicates that over 95% of reported rape cases involve perpetrators known to the survivors, rather than strangers.⁴¹ This suggests that a significant proportion of sexual violence occurs in private settings. Consequently, the fact that an offence takes place in a known or secluded environment, an argument often raised in the context of marital rape, has not, in cases of non-marital rape, been considered sufficient to deny legal protection to women and gender minorities.

Next, many countries around the world have criminalised marital rape, and continue to investigate and prosecute it. A few best practices, which can be adopted in the Indian context, have been summarised below.

- In countries where marital rape is criminalised, the underlying legal principle is that marriage does not imply consent. Once this principle is established in law, marital rape is investigated and prosecuted in the same manner as other forms of rape, **without any special evidentiary burden on the survivor.**

⁴¹ Queensland Sexual Assault Network, Myths ; Facts About Sexual Assault, <https://qsan.org.au/myths-facts/> (last visited Feb. 10, 2026); Rape Crisis England ; Wales, Myths vs. Realities About Sexual Violence, <https://rapecrisis.org.uk/get-informed/about-sexual-violence/myths-vs-realities/> (last visited Jan. 16, 2026).



- **Circumstantial evidence:** In the **UK**, sexual violence and rape cases are built using a balanced mix of physical, digital, forensic, and other circumstantial evidence. The CPS guidance explicitly directs prosecutors to assess such evidence collectively, rather than relying solely on direct witnesses. CCTV footage, phone data, medical records, and witness accounts of behaviour are all treated as forms of circumstantial evidence.⁴² In the **United States**, there is an emphasis on trauma-informed prosecution, which makes use of circumstantial evidence such as the absence of consent, the presence of a struggle, and the behaviour of the parties involved before, during, or after the incident. These factors, together with testimonies and other forms of evidence, help provide context for understanding the assault.⁴³ In **Canada**, circumstantial evidence may originate from the complainant, witnesses, or documentary sources. This can include the survivor's mental or emotional state before and after the assault, their attitude towards the accused, and other related factors. Canadian law recognises that both direct and circumstantial evidence are equally admissible.⁴⁴
- **Survivor testimony** is treated as primary evidence. In countries like **Canada** and the **UK**, police are required to adopt a trauma-sensitive approach,⁴⁵ and they cannot dismiss complaints in the absence of witnesses or physical injuries.
- Medical and forensic evidence is documented, which may reveal injuries, signs of force and psychological trauma. Importantly, lack of medical or forensic evidence does not bar prosecution, particularly in intimate-partner cases, where reporting may be delayed.⁴⁶ For instance, in **New Zealand**, courts have put effort into listing common misconceptions and countering them with logic. It explains how the lack of evidence or visible trauma and the delay in reporting the crime cannot be used against the survivor. It rejects how the lack of physical evidence, like genital injury, can be considered to determine whether a sexual assault has happened or not.⁴⁷

42 Crown Prosecution Service, Rape and Sexual Offences: Chapter 2 Applying the Code – Crown Prosecutors: Rape and Sexual Offences (last updated Oct. 2019), <https://www.cps.gov.uk/prosecution-guidance/rape-and-sexual-offences-chapter-2-applying-code-crown-prosecutors-rape-and> (last visited Feb. 10, 2026); UK Government, Investigating a Rape or Sexual Assault (last updated Apr. 24, 2024), <https://www.gov.uk/government/publications/guides-for-victims-of-rape-and-sexual-assault/investigating-a-rape-or-sexual-assault> (last visited Feb. 10, 2026).

43 HHJ Trial Attorneys, Understanding Evidence in a Sexual Assault Case (June 21, 2023), https://hhjtrialattorneys.com/evidence-in-a-sexual-assault-case/#Circumstantial_Evidence (last visited Feb. 10, 2026).

44 R. v. Rioux, 2025 SCC 34 (Can.), <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/21256/index.do> (last visited Feb. 10, 2026).

45 Crown Prosecution Service, Rape and Sexual Offences – Chapter 3: Case Building (last updated Jan. 14, 2026), <https://www.cps.gov.uk/prosecution-guidance/rape-and-sexual-offences-chapter-3-case-building> (last visited Feb. 10, 2026).

46 Crown Prosecution Service, Rape and Sexual Offences – Annex A: Tackling Rape Myths and Stereotypes (last updated May 21, 2021), <https://www.cps.gov.uk/prosecution-guidance/rape-and-sexual-offences-annex-tackling-rape-myths-and-stereotypes> (last visited Feb. 10, 2026).

47 Courts of New Zealand, Addressing Misconceptions About Sexual Offending: Judicial Directions Material (July 2024) <https://www.courtsofnz.govt.nz/assets/Uploads/Addressing-misconceptions-version-July-2024.pdf> (last visited Feb. 10, 2026).



- Many jurisdictions' laws allow for investigators to rely on contextual evidence, such as a history of domestic or sexual abuse; text messages, emails, or recordings; testimony from friends, family, neighbours, or counsellors; evidence of fear, control, or coercion and prior complaints or protection orders. For instance, it is explicitly stated in **Scotland's** laws related to Domestic Abuse on how the investigating officers must also consider other factors, like the history of abuse and the nature of the relationship. These are considered important factors which help the prosecution build cases.⁴⁸ In **Canada** as well, statements of witnesses, including children and neighbours, similar fact evidence, and previous relevant convictions and occurrence reports are used as evidence for domestic violence.⁴⁹
- Many jurisdictions also have specially-trained investigators in sexual violence cases. For instance, under the **Australian** Law Reform Commission ; NSW Law Reform Commission, specialist police units with officers who received highly specialised training on how to handle domestic or family abuse were formed. These units operated along with the specialist sexual assault investigation units, which received training in investigative techniques specialised for such cases.⁵⁰ The **US** also has Sexual Assault Investigations Training Program.⁵¹
- In courts, many countries do not allow the use of prior sexual history, character assassinations based on marital conduct and irrelevant questioning based on the survivor's lifestyle choices. For example, the Rape Victim Assistance and Protection Act of 1998 of the Philippines rejects the admission of the survivor's past sexual conduct or opinions about her reputation. This can only be taken into account if the court decides that it is material to the present case.⁵² Such laws are present in **Australia**⁵³ and **Canada**,⁵⁴ too.

48 Crown Office & Procurator Fiscal Service ; Police Scotland, Joint Domestic Abuse Protocol, 6th ed. (May 2023), <https://www.copfs.gov.uk/media/xjtd4i4p/joint-domestic-abuse-protocol.pdf> (last visited Jan. 16, 2026).

49 Department of Justice Canada, Trial Stage in Best Practices Where There Is Family Violence (Criminal Law Perspective) (last updated Dec. 6, 2021), <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/bpfv-pevf/p6.html> (last visited Feb. 10, 2026).

50 Christopher Dowling, Police Training in Responding to Family, Domestic and Sexual Violence, Trends ; Issues in Crime ; Criminal Justice No. 689 (Austl. Inst. of Criminology Apr. 18, 2024), https://www.aic.gov.au/sites/default/files/2024-04/ti689_police_training_in_responding_to_fdsv.pdf (last visited Feb. 10, 2026).

51 Federal Law Enforcement Training Centers, Sexual Assault Investigations Training Program, <https://www.fletc.gov/sexual-assault-investigations-training-program> (last visited Jan. 16, 2026).

52 Rape Victim Assistance and Protection Act of 1998, Republic Act No. 8505 (Phil.), <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/4777> (last visited Feb. 10, 2026).

53 Austl. Law Reform Comm'n, ch. 20, Matters Outside the Uniform Evidence Acts (Rape Shield Laws), in Uniform Evidence Law, ALRC Report No. 102 (2010), <https://www.alrc.gov.au/publication/uniform-evidence-law-alrc-report-102/20-matters-outside-the-uniform-evidence-acts/rape-shield-laws/> (last visited Feb. 10, 2026).

54 SexAssault.ca, Sexual Assault Criminal Process, <https://www.sexassault.ca/criminalprocess.html> (last visited Jan. 16, 2026).



The do's & don'ts while investigating marital rape in India

Do's

- Treat the survivor's testimony as credible unless there is strong evidence to prove the contrary. Recognise the testimony as primary evidence.
- Understand that trauma affects memory, behaviour, and reporting patterns. Avoid expecting perfect testimonies.
- Consider evidence collectively rather than in isolation. Indicators such as absence of consent, signs of struggle, or coercion should be considered. Follow approaches like holistic assessment, trauma-informed use of circumstantial evidence, and integration of both direct and circumstantial evidence.
- Incorporate contextual evidence by examining the broader relationship context [History of abuse, power dynamics within the marriage, witness statements, and prior complaints, etc., can be considered].
- Ensure the proper use of medical and forensic evidence. Recognise that lack of physical injury does not imply consent or that the abuse never happened.
- Assign cases to officers trained to handle sexual violence cases.
- Maintain confidentiality and safety throughout the investigation. Use sensitive interviewing techniques to avoid re-traumatisation.
- Understand that a lack of substantiation of an allegation does not mean that the case is false.

Don'ts

- Do not equate lack of physical injury with consent. Coercion may include emotional manipulation, threats and economic dependence.
- Do not treat the incident as isolated without examining prior abuse or coercion. Ignoring context can lead to incomplete or flawed conclusions.
- Do not use victim-blaming questions and aggressive interrogation styles. These can retraumatise survivors and distort testimony.
- Do not assign untrained personnel to such cases. Lack of expertise can lead to mishandling and injustice.
- Do not assume that the complaint is false or malicious because there is no proof, or because a false complaint has been filed before, or because there are some inconsistencies in the story.
- Do not consider the survivor's moral character or past sexual history.
- Do not delay evidence collection or proper documentation as this can lead to loss of crucial evidence and weaken the case.
- Do not ignore delayed reporting. Trauma, fear of social stigma and economic dependence can cause delays in reporting.
- Do not practice a one-size-fits-all approach. Consider intersectional factors like disability, caste, and class, among others.
- Do not assume consent by virtue of their marriage/ relationship!



However, even though marital rape is criminalised in these countries, the sentences for them are much lower as compared to other forms of rape. This needs to be problematised, since the underlying contention is that being one's spouse should not count as a mitigating factor while sentencing the perpetrator. Indian scholarship in this subject also suggests that circumstantial evidence must be taken into consideration.⁵⁵ Considering the private nature of marital rape as a crime, more often than not, courts may have to rely on the survivor's testimony. Therefore, courts must look for other forms of circumstantial evidence, such as a pattern of behaviour, contemporary disclosures by the survivor, medical examinations, and so on.

These practises show that marital rape is not “impossible to prove”, it can be investigated using the same tools and methods for rape of a non marital nature. While challenges exist in other countries as well, they have addressed them through reform, and not exemptions.

Regardless, these practises show that marital rape is not “impossible to prove”, it can be investigated using the same tools and methods for rape of a non-marital nature. While challenges exist in other countries as well, they have addressed them through reform, and not exemptions.

CHALLENGE 2: DO MEN ALSO REQUIRE PROTECTION AGAINST MARITAL RAPE?

Many critics have argued that India's rape laws have been gender-biased, with practically no protections for male survivors of sexual violence.

Solution: While men currently do not have legal protection against sexual violence in India, it is not a reason to protect them from being held accountable for marital rape. Instead, the legislature must enact laws to protect them from sexual violence. There are two principled ways to approach this:

- Make India's rape laws gender-neutral.
- While keeping the current rape laws as the status quo, enact special laws to protect men from rape.

⁵⁵ Raveena Rao Kallakuru ; Pradyumna Soni, Criminalisation of Marital Rape in India: Understanding Its Constitutional, Cultural and Legal Impact, 11 NUJS L. Rev. 121 (2018), <https://nujlawreview.org/wp-content/uploads/2018/01/11-%E2%80%931-%E2%80%93Raveena-and-Pradyumna.pdf> (last visited Feb. 10, 2026).



In both scenarios, the law must define rape against a man as any non-consensual sexual penetration or sexual act of a specified gravity, irrespective of the gender of the perpetrator. The law must specifically cover forced-to-penetrate situations.⁵⁶ While many global jurisdictions have enacted gender-neutral rape laws, having gender-specific rape laws might account for the gendered nature of sexual violence, especially in marriages or other relationships.

Gender-neutral rape laws acknowledge that any person, regardless of gender, can be a survivor of non-consensual sexual actions and that the harm caused by rape is not the survivor's identity but rather the violation of physical integrity.

A consent-centric and autonomy-based concept of sexual violence would be reflected in bringing men into the purview of marital rape legislation through a gender-neutral rape framework. Gender-neutral rape laws acknowledge that any person, regardless of gender, can be a survivor of non-consensual sexual actions and that the harm caused by rape is not the survivor's identity but rather the violation of physical integrity.

If such a paradigm were extended to marriage, it would guarantee that sexual assault in close relationships would be evaluated only based on consent, not on gendered presumptions about marital duties or sexual entitlement. Additionally, a gender-neutral approach would bring Indian criminal law into compliance with Articles 14 and 21 of the Constitution, which guarantee equality and individual liberty.

Maintaining India's current gender-specific rape legislation for women while adopting a distinct, special law to address rape and severe sexual violence against men, including inside marriage, is an alternate legislative strategy. In addition to acknowledging the systemic and historical realities of sexual assault against women, this approach recognises that male survivors are currently completely unprotected by rape laws. Non-consensual sexual activities against men could be defined as a separate criminal offence by a specific statute that makes it clear that intimate relationships and marriage do not qualify as consent.

Without altering the current framework of rape law for women, a new statute might recognise the seriousness of sexual violence against men by adopting consent-based criteria, establishing proper investigative methods, and prescribing proportionate sanctions.

⁵⁶ Siobhan Weare, From Coercion to Physical Force: Aggressive Strategies Used by Women Against Men in "Forced-to-Penetrate" Cases in the UK, 47 Arch. Sexual Behav. 2191 (2018).



POLICY AND LEGAL RECOMMENDATIONS

As the notion of implied consent is used to escape criminal liability both in a cultural and legal instance, it is imperative to have a strong legal framework that removes any provision to sustain it. Legislative reforms within Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA), which focus on substantive law, procedural law, and evidence law, should move towards absolute protection of a woman's constitutional rights.

1) Proposed amendments to BNS: The primary focus of legal reforms must be the immediate repeal of Exception 2 to Section 375 of IPC/ Section 63 of BNS. This exception is in direct violation of Article 14 and Article 21, which entitle all its citizens to equality and the right to bodily autonomy and dignity. The exception should be deleted in its entirety, with an explicit clarification that marriage or any other intimate relationship does not constitute consent. This clarification should be embedded within the definition of consent itself, rather than placed in ancillary explanations, to prevent interpretive dilution by investigating agencies or courts. This is an important legal step towards dismantling the doctrine of implied consent and ensuring that the marital relationship is not invoked as a defence by the accused.⁵⁷ Further, Section 67 of BNS warrants a lesser punishment if a man has sex with a separated wife, which is based on archaic social moralities and perpetuates inequality before the law. This section must be amended so that it carries the same severity as non-marital rape.

Additionally, implementation must prioritise survivor access to justice at the police level. Standard Operating Procedures (SOPs) should be issued to all police stations mandating the registration of First Information Reports for sexual offences within marriage, without requiring proof of physical resistance or corroboration beyond the survivor's statement at the threshold stage. In short, the repeal must be precise and unambiguous.

⁵⁷ Raveena Rao Kallakuru ; Pradyumna Soni, Criminalisation of Marital Rape in India: Understanding Its Constitutional, Cultural and Legal Impact, 11 NUJS L. Rev. 1 (2018).



2) Proposed amendments to BSA: The private nature of marital rape often makes it challenging to present evidence in cases of marital rape. To address this, BSA must be amended to permit the history of cruelty or abuse from the husband as a valid evidence,⁵⁸ enabling the court to assess the contextual background. While admission of either party's bad character is frowned upon in Indian evidence law, it may be helpful in establishing a pattern of behaviour. Additionally, routine evidentiary procedures employed in non-marital rape cases, like medical and psychological reports and testimonies, should be equally applicable in cases of marital rape, along with other evidentiary protocols used in cases of non-marital rape. Equal application of these evidentiary tools would ensure consistency, rescue underreporting, and strengthen the access to justice.

3) Strengthening civil frameworks of justice: The Union must reinforce and strengthen existing civil remedies under legislations such as the Protection of Women from Domestic Violence Act, 2005. Civil measures such as protection orders, monetary relief, counseling, and residence rights are often highly effective since they give quicker and more survivor-centric relief. Many survivors may prefer these over incarceration of their husbands, especially if they are financially dependent on them. Hence, improving civil justice pathways ensures autonomy, accessibility, and meaningful redress without forcing survivors into punitive systems.

4) Survivor protection and investigation protocols: Apart from the legal protection, there should also be measures to ensure medical and psychological support to the survivors.⁵⁹ Survivors often have to endure severe physical and reproductive health consequences, such as unwanted pregnancies, miscarriages, sexually transmitted diseases, and the complications arising from inadequate access to prenatal care. Medical professionals, being the first contact for victims in these instances, should be trained for sensitive handling of cases. The psychological impact is equally profound, with many survivors developing post-traumatic stress disorder, anxiety, depression and other mental health conditions.⁶⁰ There should be institutionalised medical and counselling support to address these short-term and long-term consequences. These measures will ensure that survivors are not only protected legally, but are also entitled to necessary care to address any physical, psychological and reproductive consequences of marital rape.

58 Dr. Payal Thaorey ; Shikha Gupta, Criminalization of Marital Rape – A Legal Analysis, 2 Pimpri L. Rev. J. (2023).

59 Muskan Sharma, Criminalisation of Marital Rape: An Analysis of its Constitutionality with Reference to Judicial Pronouncements in India, 6 Int'l J.L. Mgmt. ; Humanities 929 (2023)

60 Dhara Mittal ; Ksheerja Srivastava, Criminalisation of Marital Rape: A Cost-Benefit Analysis from a Utilitarian Perspective, 5 Ind. J. Integrated Rsch. in L. 999 (2025).



Additionally, all investigative protocols and procedures must protect the privacy and dignity of the survivor at every stage. Taking into consideration the deeply personal nature of the offence, the investigation should move away from an exclusive focus on signs of physical violence to a nuanced understanding of consent. This would also be in line with global practice. Further, law enforcement personnel and authorities must undergo a mandatory gender-sensitisation and trauma-informed training to ensure that marital rape cases are handled sensitively. It should also train authorised personnel to hold empathetic, non-judgemental and sensitive interactions with the survivors.

5) Public awareness campaigns to shift social norms: Public morality, shaped by entrenched social beliefs, may continue to perceive spousal rape as acceptable or private, just as it historically legitimised practices such as sati or the dowry system, which were later criminalised despite cultural sanction.⁶¹ Awareness campaigns are therefore necessary to bridge the dissonance between public morality and constitutional morality, emphasising that consent within marriage is a non-negotiable constitutional right rather than a negotiable cultural practice. These campaigns should engage diverse media, educational curricula, and community-based forums to challenge myths that marriage entails unconditional sexual consent, while promoting a constitutionally grounded understanding of sexual autonomy and equality between sexes. By demonstrating that societal acceptance of a practice does not confer legitimacy, awareness efforts can counter cultural narratives that perpetuate male dominance within marriage and reduce the stigma surrounding reporting marital sexual violence.

⁶¹ Rohit Sharma, The Public and Constitutional Morality Conundrum: A Case-Note on the Naz Foundation Judgement, 2 NUJS L. REV. 445 (2009).



ROADMAP TO CHANGE

This section includes shared responsibilities in ending marital rape. It calls on the government to reform its systems and laws and urges civil society and the media to support survivors by changing public perceptions. It also highlights the role of the public in challenging norms that normalise abuse and deny consent.

Government Responsibilities:

- Enact and enforce laws that criminalise marital rape without exception based on marriage;
- Mandate survivor-centric reporting, medical, and forensic protocols for marital and domestic sexual violence, with enforceable timelines and accountability mechanisms;
- Establish uniform, trauma-informed investigation procedures and ensure specialised training for police, prosecutors, medical professionals, and judges handling sexual violence cases;
- Integrate comprehensive, age-appropriate sex education into school curricula, delivered by trained counsellors and sexuality educators;
- Develop adult education programmes on consent, bodily autonomy, and healthy relationships, supported by evidence-based materials and real-world case studies;
- Strengthen data collection, research, and periodic monitoring on marital sexual violence to inform policy, measure underreporting, and evaluate implementation; and
- Expand and adequately fund shelter homes, crisis centres, medical care, and long-term rehabilitation services for survivors forced to leave abusive marriages.

Civil Society and Media Interventions:

- Design and implement sustained public awareness campaigns that clearly identify marital rape as sexual violence and reject its framing as a private or matrimonial issue;
- Provide legal aid, counselling, livelihood support, and rehabilitation services to survivors, including pathways to economic independence;
- Engage in continuous advocacy for stronger, survivor-centric legal reforms and effective implementation of existing laws; and
- Adopt and enforce media guidelines that ensure ethical, survivor-friendly reporting, avoid sensationalism and survivor-blaming, and respect privacy and dignity.



Public and Community Action:

- Support survivors as witnesses, family members, neighbours, and community members, including by believing and standing with them;
- Foster open conversations within families and communities about consent, respect, and boundaries, starting from childhood;
- Actively challenge the normalisation of abuse by calling out sexist language, jokes, and practices that legitimise coercion;
- Promote equality within households by supporting shared decision-making and respect for bodily autonomy; and
- Participate in collective, community-based efforts to dismantle rape culture, recognising that sustained social change requires consistent and shared responsibility.



CONCLUSION

Marital rape is not merely a legislative gap, but a constitutional failure to protect the rights of married women. Articles 14, 15, and 21 of the Indian Constitution are among the most fundamental provisions, and violations of these rights must never be dismissed. Yet, the position taken by the State reflects a clear contradiction.

In the Union's affidavit opposing the criminalisation of marital rape, it stated:

“Further, it is submitted that a husband certainly does not have any fundamental right to violate the consent of the wife; however, attracting the crime in the nature “rape” as recognised in India to the institution of marriage can be arguably considered to be excessively harsh and therefore, disproportionate. This Hon’ble Court has further adopted a balancing approach in order to reconcile the perceivable engagement between fundamental rights.”

This reasoning is deeply problematic because it accepts, in principle, that a husband has no right to violate his wife's consent, yet simultaneously resists recognising that violation as rape, thereby hollowing out the very right it claims to protect. If non-consensual sexual intercourse is acknowledged as a violation of bodily autonomy, dignity, and sexual agency, then excluding it from the offence of rape solely because it occurs within marriage creates an unjustifiable legal hierarchy of harm.



The claim that recognising rape within marriage would be “excessively harsh” shifts the focus from the severity of the violation suffered by the survivor to the perceived burden on the perpetrator, effectively privileging the institution of marriage over a woman’s fundamental rights under Articles 14, 15, and 21. Proportionality in criminal law must be assessed against the gravity of the harm caused, not the marital status of the parties. To treat the same act of forced sexual intercourse as rape outside marriage but as a lesser offence within it is arbitrary, discriminatory, and constitutionally indefensible, as it normalises sexual violence in marriage and denies married women equal protection of the law.

This position also stands in contrast to India’s international obligations. In both the [2017](#) and the latest [2023](#) Reports of the Working Group on the Universal Periodic Review, over ten countries explicitly recommended the criminalisation of marital rape by removing the marital exception and expanding the definition of rape.⁶² Persistent non-cooperation with the UPR’s recommendations is concerning, particularly in light of the fact that India has signed CEDAW.

This continued oversight by the State serves only to silence survivors by discouraging reporting. It also results in the absence of reliable data, making it difficult to monitor the scale of harm or design effective interventions. By choosing not to criminalise marital rape, the State neglects married women’s access to justice and undermines their trust in the criminal justice system.

With the judiciary having acknowledged the harm caused by marital rape, the responsibility now rests with Parliament to act and design laws that legally recognise this harm. The government, along with civil society, the media, and the public, can together bring about a long-overdue change. Ultimately, the State must ensure that the marital bond can never be used to dilute the fundamental rights of individuals.

⁶² U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: India, U.N. Doc. A/HRC/36/10 (17 July 2017), <https://documents.un.org/doc/UNDOC/GEN/G17/193/56/PDF/G1719356.pdf> (last visited Feb. 10, 2026); U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: India, U.N. Doc. A/HRC/52/11 (14 December 2022), <https://undocs.org/A/HRC/52/11> (last visited Feb. 10, 2026).

