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CRIME WITHIN INTIMATE RELATIONSHIPS**

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MARITAL RAPE: UNVEILING THE HIDDEN CRIME WITHIN INTIMATE RELATIONSHIPS

Ishan Atrey¹

“The best form of government is that which is most likely to prevent the greatest sum of evil”

– James Monroe

ABSTRACT

Marital rape is a form of sexual violence that occurs when a husband forces his wife to have sexual intercourse against her will. It is a crime that is often hidden and unreported, and it can devastate the victim's physical and emotional health. This paper will explore the definition of marital rape, its prevalence, and its impact on victims. It will also discuss the legal and social challenges that have made it difficult to prosecute marital rape cases. Finally, it will offer some suggestions for how to address this issue and help victims of marital rape get the support they need. Marital rape, the sexual violation committed by one spouse against another, has long been a neglected and controversial topic. This research paper aims to shed light on the complex issue of marital rape by exploring its historical context, legal perspectives, societal attitudes, psychological impacts on survivors, and the challenges faced in addressing and preventing this heinous crime. By analyzing existing literature, empirical studies, and legal frameworks, this paper seeks to contribute to a better understanding of marital rape and advocate for comprehensive measures to protect the rights and well-being of individuals within intimate relationships. Marital rape is a severe problem that has a devastating impact on victims. There are a number of legal and social challenges that have made it difficult to prosecute

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marital rape cases. However, there are also a number of things that can be done to address this problem. By educating people about marital rape, changing the laws, and providing support for victims, we can help to make this crime a thing of the past. Reducing marital rape requires a collective effort from governments, civil society organizations, communities, and individuals. By implementing these suggestions, we can work towards creating a society that rejects violence, respects consent, and upholds the rights and autonomy of all individuals. Moreover Changing societal attitudes towards marital rape requires addressing these socio-cultural factors through comprehensive efforts such as legal reforms, education, raising awareness, and challenging harmful gender norms and stereotypes. In examining spousal rape laws in detail, the key characteristics should relate to the age at which valid consent to sexual intercourse can be given. This is particularly true with regard to a female child. In this regard, the Commission has expressed certain views. It was reiterated that under the law, a girl who is not at least 18 years old is prohibited from getting married and therefore should not be coerced into any non-consensual sexual activity. It was also found that the IPC must contain provisions that take account of such a situation. Such observations were presented by the Commission in 1980 to rule out non-consensual sex with a girl under the age of 18, i.e Marital rape to be declared a criminal offence.

KEYWORDS

Marital Rape, India, Law, Violence against Women, Criminal law, Women, Wives, Marriage.

INTRODUCTION

Marital rape is a form of sexual violence when a husband forces his wife to have sex against her will. It is a crime that is often hidden and unreported, and it can devastate the victim's physical and emotional

health. The definition of marital rape has evolved over time. It was commonly believed that a husband had the right to have sex with his wife whenever he wanted, regardless of her consent. However, this view is no longer accepted by most people. Today, marital rape is recognised as a form of sexual assault and is illegal in most countries.

Despite the fact that marital rape is illegal, it is still a widespread problem. According to a study by the National Sexual Violence Resource Centre, one in seven women in the United States has been raped by an intimate partner. And, because marital rape is often hidden and unreported, the actual number of cases is likely much higher.

Marital rape can have a devastating impact on victims. It can cause physical injuries, including bruises, cuts, and even death. It can also lead to emotional problems, such as post-traumatic stress disorder (PTSD), anxiety, and depression. In addition, marital rape can damage a victim's self-esteem and make it difficult for her to trust others. Many reforms have been made to India's rape laws, especially following the Nirbhaya Case in 2012. Following this incident, a significant uprising in India called for stringent laws pertaining to Non-Consensual sexual acts. A subsequent modification to the rape statutes was also embraced within a year, in 2013. Where Sexual Harassment at Workplaces was recognised as a form of an Offence, and certain Amendments were made to prevent these offences.

However, the word "marital rape" continues to be taboo. Section 375 of the IPC governs rape legislation in India. Marital rape is not, however, a felony under Exception 2 of Section 375. : Thirty-two percent of ever-married women age 18-49 have experienced physical, sexual, or emotional spousal violence. The most common type of spousal violence is physical violence (28%), followed by emotional violence (14%). 6% of ever-married women aged 18-49 have experienced spousal sexual violence. It is a non-consensual act of violence forced on the woman by her husband,

which physically and sexually abuses the woman. The husband may use physical violence, threaten violence against her or someone else, or cause harm based on previous abuses, leading the wife to fear that any form of physical violence may be used against her if she endures (Kallakaru & Soni, 2018).

As per the second exception to Sec. 375 of the Indian Penal Code expressly specifies, Sexual contact between a man and his wife who is over the age of 15 is not rape. This was not aligned with the age of consent since the legal age of valid consent in India is 18 years. It was only in 2018 in the case of *Independent Thought v. Union of India*, that the court made an attempt to align the age of consent in IPC with the legal age of valid consent and explicitly laid down that sexual intercourse with a wife below 18 years of age is rape, consent being immaterial. The legislature has not yet removed this inconsistency (Agarwal, Abdalla, & Cohen, 2022).

Only after 1983, with the landmark decision in the Mathura Gang rape case in India, there were fundamental changes to the already outdated law. In this case, the main issue was that rape victims should sound the alarm and show their shortcomings. It could also be a question of submitting to the violence of the rapist to become a rape victim. This brings me to the question of consent. The 1983 amendments to the IPC and other related regulations fundamentally changed the policy of rape laws and brought about much-needed reforms (Tukaram v. State of Maharashtra, 1979).

BACKGROUND AND SIGNIFICANCE

Marriage is traditionally regarded as a sacred institution built on love, trust, and mutual respect. However, hidden behind the facade of marital bliss, a grave issue persists – marital rape. Marital rape refers to non-consensual sexual acts perpetrated by one spouse against the other

within the confines of marriage or intimate partnerships. Unlike other forms of sexual violence, marital rape has historically been neglected, dismissed, or even condoned due to misconceptions about spousal rights and societal attitudes towards marriage.

The significance of understanding and addressing marital rape lies in its violation of fundamental human rights, the well-being of survivors, and the broader implications for gender equality and social justice. Marital rape denies individuals the autonomy and bodily integrity they deserve, perpetuating power imbalances and unequal gender dynamics within intimate relationships. Marital rape is a form of sexual violence when a husband forces his wife to have sex against her will. It is a crime often hidden and unreported, and it can devastate the victim's physical and emotional health.

There are a number of reasons why marital rape is often hidden and unreported. Victims may be afraid to come forward because they fear retaliation from their husbands or believe no one will believe them. In addition, victims may feel ashamed or embarrassed about being raped by their husbands. There are a number of things that can be done to address the problem of marital rape. One important step is to educate people about what marital rape is and why it is a crime. This education can be done through public awareness campaigns, school programs, and other initiatives.

Statistics show that in every 6 hours, a married woman is abused, whether through burns or prolonged torture, resulting in her death. Approximately 50% of women do not report this and believe it is their duty to offer sex to their counterparts. During the research, it was also deduced that to the husbands who rape their wives every night explained that does to their wives to express their dominance over their wives. There are many stereotypical ideologies associated with violent sex. This includes women blaming themselves for being bad spouses because they

don't enjoy intercourse, while men believe that a woman's protests should be ignored and that it is her duty to have intercourse whenever the man needs him (Akshaya & Kannappan, 2018).

Finally, it is important to provide support for victims of marital rape. This support can come from a variety of sources, including rape crisis centers, shelters, and counselling services. It is important for victims to know that they are not alone and that there are people who can help them.

There are three types of rape which are: -

- a) Forced Rape-** It has been described as a type of rape in which the husband uses threats, force and some violence only to the degree required for a coercive sex. This usually happens when there is already some amount of violence between the couple prior to intercourse and also includes verbal violent acts by the male.
- b) Battering Rape-** This is the most common form of Rape and in the twentieth century, beatings have been continuous in countries like England and US and even today in some cultures, it is prevalent. This type basically is made up of two words and is a combination of both beating and rape. Sexual abuse is a general pattern along with the husband's other abuses and violent acts. It is generally categorised as physical violence and violent sexual act (Nayak & Srivastava, 2020).
- c) Obsessive Rape-** It is the sadist form of rape and the husband is usually obsessed with the act and the abuser feels pleasure in performing violent acts.

OBJECTIVES OF THE RESEARCH

The primary objectives of this research paper are as follows:

- a) To examine the historical context surrounding marital rape, including the perception of marriage, spousal rights, and the evolution of laws pertaining to this issue.
- b) To analyze various countries' legal frameworks and approaches in criminalizing marital rape, while identifying the challenges in prosecuting and convicting offenders.
- c) To explore societal attitudes and beliefs that contribute to the perpetuation of marital rape, including myths, misconceptions, cultural factors, and victim blaming.
- d) To understand the psychological impact of marital rape on survivors, including trauma, post-traumatic stress disorder (PTSD), emotional and psychological consequences, and the effects on intimate relationships and sexual functioning.
- e) To identify the barriers faced by survivors in reporting and seeking justice for marital rape, including fear, shame, lack of awareness, legal and institutional obstacles, and the impact of power imbalances within relationships.
- f) To examine existing support services available for survivors of marital rape, including counselling, medical and forensic support, and legal assistance.
- g) To explore preventive measures and intervention strategies to address marital rape, such as education and awareness campaigns, policy reforms, empowerment of survivors, and stakeholder collaborative efforts.
- h) To provide recommendations for future directions in combating marital rape, including closing legal loopholes, enhancing support services, promoting education and awareness, and strengthening research and data collection on this issue.

By addressing these objectives, this research aims to contribute to a comprehensive understanding of marital rape and pave the way for effective prevention, support, and legal reforms that priorities the rights

and well-being of individuals within intimate relationships.

RESEARCH METHODOLOGY

The main aim of the research is to analyse the various ways in which the legal provisions related to marital rape prevails in India as well as its scope internationally. It shall comprise the historical aspect of how women were treated in an early age compared to the treatment they are now given. The research will be doctrinal in its nature. Methodology adopted for working out the doctrinal research structure will include legal principles, legislative arguments, authored concepts and data from books. This doctrinal research will be about the impact of the existing laws of marital rape on women's social and mental condition. It shall work out the mechanisms that have been adopted from early times and which are still prevalent in the society despite the changing trends in the status of women in the count

HISTORICAL PERCEPTION OF MARRIAGE AND SPOUSAL RIGHTS

The concept of marital rape has shaped the historical perception of marriage and spousal rights. In the past, it was widely believed that a husband had the right to have sex with his wife whenever he wanted, regardless of her consent. This belief was based on the idea that marriage was a contract between a man and a woman, and that the husband was the head of the household (Tiwari & Bisht, 2021).

This view of marriage and spousal rights changed in the 19th century as women began to demand more rights and freedoms. In 1875, the United States passed the first law criminalizing marital rape. However, this law was not widely enforced, and it was not until the 1970s that marital rape began to be recognised as a severe problem. In the 1970s, a number of feminist activists began to speak out against marital rape. They argued that marital rape was a form of domestic violence and that it should be treated as a crime. These activists also helped raise awareness about

marital rape and worked to change the laws that allowed husbands to rape their wives with impunity (Yadav & Dalal, 2021).

As a result of the efforts of these activists, marital rape has become increasingly recognised as a crime. Today, marital rape is illegal in most countries, and it is no longer seen as a husband's right. However, much work still needs to be done to address this problem. Many victims of marital rape are still afraid to come forward, and they may not know where to get help. It is important to continue raising awareness about marital rape, and to provide support for victims affected by this crime.

In many societies, including ancient civilizations and medieval Europe, the concept of "conjugal rights" emerged, which emphasized a husband's entitlement to sexual access to his wife. These rights were often deeply entrenched in religious and cultural norms, where a wife was considered her husband's property and expected to fulfil her marital duties, including providing sexual satisfaction. The legal frameworks surrounding marriage also reflected this historical perception. Many legal systems, both in Western and non-Western societies, recognised the principle of coverture, which merged a woman's legal identity with that of her husband upon marriage. This legal concept further reinforced the notion that a wife's autonomy and bodily agency were subordinate to her husband's authority, including in matters of sexual intimacy. These historical attitudes and legal frameworks have perpetuated the misconception that consent is presumed within the institution of marriage. The idea that spouses cannot refuse sexual advances from their partners has been deeply ingrained in societal beliefs, contributing to the normalization and trivialization of marital rape. In the past, marriage was seen as a contract between a man and a woman, and the husband was the head of the household. This view of marriage led to the belief that a husband had the right to have sex with his wife whenever he wanted, regardless of her consent. In the 19th century, women began to

demand more rights and freedoms, which changed how marriage was viewed. In the 1970s, feminist activists began to speak out against marital rape, and this helped to raise awareness about this issue. As a result of the efforts of these activists, marital rape is now illegal in most countries. However, there is still much work to be done to address this problem, and victims of marital rape may still be afraid to come forward. (BENNICE & RESICK, 2003).

EVOLUTION OF LAWS REGARDING MARITAL RAPE

The evolution of laws regarding marital rape has been a long and difficult process. In the past, it was widely believed that a husband had the right to have sex with his wife whenever he wanted, regardless of her consent. This belief was based on the idea that marriage was a contract between a man and a woman and that the husband was the head of the household. This view of marriage and spousal rights changed in the 19th century, as women began to demand more rights and freedoms. In 1875, the United States passed the first law criminalizing marital rape. However, this law was not widely enforced, and it was not until the 1970s that marital rape began to be recognised as a severe problem.

The evolution of laws regarding marital rape has been a complex and gradual process influenced by changing societal attitudes, advancements in human rights, and advocacy efforts. Historically, legal systems often condoned or ignored the issue of marital rape due to prevailing beliefs about spousal rights and the sanctity of marriage (Banerjee & Sathyanarayana Rao, 2022). However, over time, significant developments have taken place to recognise and criminalize marital rape. The following are key stages in the evolution of laws regarding marital rape:

- 1. Early Legal Exemptions:** In many legal systems, early laws granted immunity to husbands from prosecution for raping their

wives based on marital consent. The legal principle of coverture, prevalent in common law jurisdictions, considered wives as the legal property of their husbands and thereby granted husbands authority over their wives' bodies.

- 2. Reform Movements:** The emergence of women's rights movements and the fight for gender equality challenged the legal exemptions and societal attitudes surrounding marital rape. Advocacy efforts highlighted the importance of bodily autonomy, consent, and the recognition of marital rape as a violation of human rights.
- 3. Progressive Legal Reforms:** In the late 20th century, several countries introduced legal reforms to address marital rape. These reforms involved repealing marital rape exemptions and recognising the importance of consent within marital relationships. Many countries modified their criminal codes to treat marital rape on par with non-marital rape.
- 4. International Human Rights Standards:** International human rights instruments and conventions played a crucial role in shaping the evolution of laws regarding marital rape. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Declaration on the Elimination of Violence against Women emphasized the need to address and criminalise marital rape as a violation of women's rights.
- 5. Global Progress:** Over the years, many countries have reformed their laws to criminalise marital rape and explicitly provide legal protection to survivors. The scope of these reforms varies, with some countries recognising marital rape as a separate offence, while others include it under general rape laws.

6. Challenges and Ongoing Issues: Despite progress, challenges persist in effectively addressing marital rape. These challenges include limited reporting due to social stigma and fear, inadequate legal enforcement, and cultural and societal norms that perpetuate gender inequality and victim-blaming attitudes.

The evolution of laws regarding marital rape reflects a broader shift towards recognising the importance of consent, gender equality, and human rights within intimate relationships, and the journey towards addressing and preventing this form of violence is an ongoing process.

SOCIO-CULTURAL FACTORS INFLUENCING ATTITUDES TOWARDS MARITAL RAPE

A range of socio-cultural factors influences attitudes towards marital rape. It is important to note that marital rape refers to any unwanted sexual activity or penetration (vaginal, anal, or oral) obtained by force, threat of force, or when the spouse is unable to give consent. Here are some socio-cultural factors that can shape attitudes towards marital rape:

- 1. Gender roles and traditional norms:** Societies with traditional gender roles may emphasize the idea that women are submissive to their husbands and that marital rape is not possible within the context of marriage. Traditional norms that prioritize male dominance and control within marriage can contribute to the acceptance or normalization of marital rape (Bhatt & Ullman, 2013).
- 2. Cultural and religious beliefs:** Cultural and religious beliefs play a significant role in shaping attitudes towards marital rape. Some cultures and religions may view marriage as a sacred institution where sexual autonomy and consent may be disregarded. Beliefs that prioritize male authority, female subservience, and the

sanctity of marriage can perpetuate the idea that marital rape is not a legitimate concept.

- 3. Lack of awareness and education:** Lack of awareness about the concept of marital rape and its implications can contribute to attitudes that dismiss or downplay its seriousness. In societies where discussions around sexuality and consent are taboo, individuals may be less informed about the importance of consent within a marital relationship.
- 4. Social stigma and victim-blaming:** Survivors of marital rape often face social stigma and victim-blaming. This can discourage survivors from speaking out and seeking support. Negative attitudes towards survivors, such as blaming them for their experiences or doubting their claims, can contribute to the normalization of marital rape.
- 5. Legal frameworks:** The presence or absence of laws criminalizing marital rape can shape societal attitudes. In some countries, laws may explicitly or implicitly condone marital rape by not recognizing it as a crime. In such cases, societal attitudes may reflect the legal framework, further perpetuating the acceptance of marital rape.
- 6. Media and cultural representations:** Media portrayals of relationships, marriage, and sexuality can influence societal attitudes. If media representations normalize or romanticize non-consensual acts within marital relationships, it can contribute to the acceptance of marital rape.

STATISTICAL DATA ON SEXUAL VIOLENCE

Percentage of women age 18-49 who have ever experienced sexual violence, by background characteristics, India, 2019-21

| Background characteristic | Percentage who have ever experienced sexual violence | Number of women |
|--|--|-----------------|
| Age | | |
| 18-19 | 3.5 | 4,907 |
| 20-24 | 4.2 | 12,190 |
| 25-29 | 6.2 | 12,040 |
| 30-39 | 7.0 | 23,613 |
| 40-49 | 6.5 | 19,306 |
| Residence | | |
| Urban | 4.7 | 23,280 |
| Rural | 6.7 | 48,776 |
| Schooling | | |
| No schooling | 8.8 | 18,294 |
| <5 years complete | 8.9 | 4,807 |
| 5-7 years complete | 6.8 | 10,267 |
| 8-9 years complete | 5.3 | 10,643 |
| 10-11 years complete | 4.8 | 9,818 |
| 12 or more years complete | 3.2 | 18,227 |
| Marital status | | |
| Never married | 1.8 | 9,600 |
| Currently married | 6.2 | 58,611 |
| Married, <i>gauna</i> not performed | 8.9 | 75 |
| Widowed/divorced/separated/deserted | 13.8 | 3,771 |
| Household structure¹ | | |
| Nuclear | 6.4 | 36,509 |
| Non-nuclear | 5.7 | 35,547 |
| Religion | | |
| Hindu | 6.0 | 56,423 |
| Muslim | 6.5 | 11,795 |
| Christian | 4.1 | 2,046 |
| Sikh | 2.5 | 646 |
| Buddhist/Neo-Buddhist | 7.2 | 732 |
| Jain | 2.0 | 186 |
| Other | 11.1 | 227 |
| Caste/tribe | | |
| Scheduled caste | 7.2 | 14,959 |
| Scheduled tribe | 6.5 | 6,409 |
| Other backward class | 5.6 | 30,055 |
| Other | 5.6 | 20,153 |
| Don't know | 5.5 | 480 |
| Wealth quintile | | |
| Lowest | 10.0 | 13,270 |
| Second | 7.6 | 14,936 |
| Middle | 5.4 | 15,311 |
| Fourth | 4.2 | 15,263 |
| Highest | 3.2 | 13,276 |
| Total | 6.0 | 72,056 |

¹ Nuclear households are households comprised of a married couple or a man or a woman living alone or with unmarried children (biological, adopted, or fostered) with or without unrelated individuals. The remaining households are non-nuclear households.

Fig1.1

As per Data from Women age 18-49 were asked if they had ever experienced sexual violence by anyone as a child or as an adult. Overall, 6 percent of women report having ever experienced sexual violence in their lifetime. Women's experience of sexual violence is somewhat lower among younger women (4% each for women age 18- 19 and 20-24, 6% for women age 25-29, and 7% for women age 30 and over). Experience of sexual violence decreases sharply with schooling, from 9 percent among women with no schooling to 3 percent among women with 12 or more years of schooling. Women's experience of sexual violence declines similarly with wealth, from 10 percent among women in the lowest wealth quintile to 3 percent among women in the highest wealth quintile.

Widowed, divorced, separated, or deserted women and women from 'other' religions are far more likely than any other women to report having experienced sexual violence.

Table 15.5 Age at first experience of sexual violence

Percentage of women age 18-49 who experienced sexual violence by specific exact age, according to current age and marital status, India, 2019-21

| Background characteristic | Percentage who first experienced sexual violence by exact age: | | | | | Percentage who have not experienced sexual violence | Number of women |
|---------------------------|--|-----|-----|-----|-----|---|-----------------|
| | 10 | 12 | 15 | 18 | 22 | | |
| Age | | | | | | | |
| 18-19 | 0.0 | 0.0 | 0.0 | 0.6 | na | 96.5 | 4,907 |
| 20-24 | 0.0 | 0.0 | 0.1 | 1.0 | na | 95.8 | 12,190 |
| 25-29 | 0.0 | 0.1 | 0.6 | 1.8 | 3.6 | 93.8 | 12,040 |
| 30-39 | 0.0 | 0.0 | 0.3 | 1.9 | 3.9 | 93.0 | 23,613 |
| 40-49 | 0.0 | 0.1 | 0.7 | 1.8 | 3.3 | 93.5 | 19,306 |
| Marital status | | | | | | | |
| Never married | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 98.2 | 9,674 |
| Ever married | 0.0 | 0.1 | 0.5 | 1.9 | 3.9 | 93.3 | 62,381 |
| Total | 0.0 | 0.1 | 0.4 | 1.6 | 3.3 | 94.0 | 72,056 |

na = Not applicable

Fig. 1.2

As per the data taken from the report given in Fig 1.2, Women's experience of physical violence increases with age, from 16 % among women age 18-19 to 32 percent among women age 40-49. The experience of violence is less common among never-married women than among women who have ever been married. Experience of spousal physical or sexual violence varies greatly with the level of the husband's alcohol consumption. Seventy-one percent of women whose husbands often get drunk have experienced spousal physical or sexual violence, compared with 23 percent of women whose husbands do not drink alcohol.

Table 15.6 Persons committing sexual violence

Among women age 18-49 who have experienced sexual violence, percentage who report specific persons committing sexual violence according to current marital status and age at first experience of sexual violence, India, 2019-21

| Person | Marital status | | Age at first experience of sexual violence | | | Total |
|--------------------------|----------------|---------------|--|--------------------|-------------------------|-------|
| | Ever married | Never married | <18 years | 18 years or higher | Don't know ¹ | |
| Current husband | 82.0 | na | 86.1 | 85.3 | 57.9 | 78.7 |
| Former husband | 13.7 | na | 14.6 | 14.9 | 8.3 | 13.2 |
| Current/former boyfriend | 1.6 | 16.1 | 2.6 | 0.8 | 4.5 | 2.2 |
| Father/step-father | 0.9 | 3.5 | 0.5 | 0.3 | 2.9 | 1.0 |
| Brother/step-brother | 0.5 | 3.9 | 0.1 | 0.0 | 2.5 | 0.7 |
| Other relative | 2.3 | 39.3 | 2.3 | 0.4 | 12.0 | 3.8 |
| In-law | 0.3 | na | 0.2 | 0.0 | 0.9 | 0.3 |
| Own friend/acquaintance | 1.0 | 2.6 | 1.0 | 0.5 | 2.3 | 1.1 |
| Family friend | 0.4 | 11.7 | 0.5 | 0.0 | 2.8 | 0.8 |
| Teacher | 0.0 | 3.9 | 0.0 | 0.0 | 0.8 | 0.2 |
| Employer/someone at work | 0.3 | 1.8 | 0.1 | 0.3 | 0.7 | 0.3 |
| Police/soldier | 0.1 | 0.0 | 0.0 | 0.0 | 0.2 | 0.1 |
| Priest/religious leader | 0.0 | 0.0 | 0.0 | 0.0 | 0.1 | 0.0 |
| Stranger | 0.2 | 5.2 | 0.1 | 0.0 | 1.5 | 0.4 |
| Other | 0.6 | 12.0 | 0.7 | 0.2 | 3.1 | 1.0 |
| Number of women | 4,169 | 176 | 1,158 | 2,100 | 1,087 | 4,345 |

na = Not applicable

¹ Includes women who report having ever experienced sexual violence committed only by their current husband if currently married or most recent husband if widowed, divorced, separated, or deserted. For these women, the age at first experience of sexual violence is not known.

Fig1.3

It shows that sexual violence is most often committed by individuals with whom women have an intimate relationship. Among ever-married women age 18-49 who have ever experienced sexual violence, 82% report their current husbands and 14% report a former husband as perpetrators. Among never-married women who reported sexual Violence, the most common most common perpetrators were 'other' relatives (39%), followed by a current or former boyfriend (16%) and a family friend (12%). Some never-married women mention strangers (5%), teacher, father/stepfather, and brother/step-brother (4% each) as perpetrators. Of all women in India who have ever experienced any physical or sexual violence, only 14 percent have sought help for the violence, and 77 percent have never sought any help nor told anyone about the violence they experienced².

² National Family Health Survey (NFHS - 5), 2019-21

LEGAL FRAMEWORKS

INTERNATIONAL PERSPECTIVES ON MARITAL RAPE

International perspectives on marital rape vary widely, with different countries having distinct legal, cultural, and social attitudes towards the issue (Garg & Singla, 2013). Here is a brief overview of some perspectives from around the world:

1. LEGAL PERSPECTIVES

- a) **Criminalization:** Many countries have criminalized marital rape, recognising it as a form of sexual violence and a violation of human rights. These countries typically treat marital rape on par with rape committed by a non-spouse.
- b) **Partial Criminalization:** In some jurisdictions, marital rape is partially criminalized, meaning it is recognised as a crime under certain circumstances (e.g., when there is physical violence or coercion involved), but not in all cases.
- c) **No Criminalization:** Unfortunately, there are still countries where marital rape is not explicitly criminalized or where legal loopholes exist, making it difficult to prosecute offenders. In these countries, the law may not recognize marital rape as a separate offence or may provide exceptions that exempt spouses from rape charges.

2. CULTURAL AND SOCIAL PERSPECTIVES

- a) **Progressive attitudes:** In many societies, there is a growing awareness and understanding of marital rape as a violation of consent and human rights. Activists, organizations, and individuals advocate for changes in attitudes, challenging traditional norms that condone or dismiss marital rape (Kumar, 2021).

- b) Traditional gender roles:** Societies with deeply ingrained traditional gender roles may have attitudes that justify or tolerate marital rape. These perspectives may view marriage as conferring automatic consent or consider it a husband's right to engage in sexual activities with his wife regardless of her consent.
- c) Evolving attitudes:** Attitudes towards marital rape are evolving in many societies as a result of increased education, awareness campaigns, and legal reforms. Recognizing the importance of consent and individual rights within a marriage is becoming more prevalent, particularly among younger generations.

3. International frameworks:

- a) United Nations:** The United Nations (UN) recognises marital rape as a human rights violation. Various UN conventions and committees, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), call for criminalising marital rape and urge member states to protect women's rights within marriage (Kadyan & Unnithan, 2023).
- b) Regional perspectives:** Different regions have varying levels of recognition and response to marital rape. Some regional human rights frameworks explicitly address marital rape, while others may still be developing comprehensive measures to address this issue.

The following is a summary of the legal status of marital rape in some selected countries:

- **India:** Marital rape is not a crime in India. However, there is a growing movement to criminalise it.

- United States: Marital rape was not a crime in all 50 states until 1993. Today, it is a crime in all states, but the penalties vary from state to state.
- United Kingdom: Marital rape was not a crime in the United Kingdom until 1991. Today, it is a crime with a maximum penalty of life imprisonment.
- Canada: Marital rape was not a crime in Canada until 1983. Today, it is a crime with a maximum penalty of 10 years in prison.
- Australia: Marital rape was not a crime in Australia until 1994. Today, it is a crime with a maximum penalty of 14 years in prison.

Marital rape can have a devastating impact on victims. It can lead to physical and psychological injuries, including post-traumatic stress disorder, depression, and anxiety. It can also damage relationships and lead to divorce.

NATIONAL APPROACHES TO CRIMINALIZING MARITAL RAPE

The Criminalization of marital rape, which refers to the act of non-consensual sexual intercourse within a marriage, varies across different countries. Historically, many legal systems did not recognise marital rape as a criminal offence, as consent within marriage was often disregarded or considered irrelevant. However, in recent years, there has been a growing recognition of the importance of consent within marital relationships, leading to changes in legislation in many countries (R.C.Jiloha, 2013).

The approaches to criminalising marital rape differ significantly among nations-

- 1. Comprehensive Criminalization:** Some countries have taken a comprehensive approach by explicitly criminalising marital rape

and treating it on par with other forms of sexual assault. These countries recognise that consent is fundamental to any sexual relationship, including within marriage. The law applies equally to both spouses, and the lack of consent determines criminal liability.

- 2. Gradual reforms:** In some countries, the Criminalization of marital rape has been achieved through gradual reforms. Initially, the law may have excluded marital rape from the definition of rape, but legislative amendments have been introduced to remove this exemption over time. This process often involves advocacy efforts by civil society organisations and the recognition of international human rights standards (Agnes, 2015).
- 3. Conditional Criminalization:** Certain countries have adopted a conditional approach, where marital rape is criminalized under specific circumstances, such as when a separation or protection order is in place. The reasoning behind this approach is to address power imbalances and provide legal protection to spouses in vulnerable situations.
- 4. Partial Criminalization:** In a few jurisdictions, the criminalization of marital rape is limited to certain situations, such as instances involving physical violence or severe coercion. This approach acknowledges the harm caused by these specific circumstances but may not provide comprehensive protection against all forms of marital rape.
- 5. Limited or no Criminalization:** Unfortunately, some countries still do not explicitly criminalise marital rape or have legal frameworks that inadequately address this issue. This may be due to cultural, social, or religious factors that priorities marital unity over spouses' individual rights and autonomy.

CHALLENGES IN PROSECUTING AND CONVICTING MARITAL RAPE

OFFENDERS

Prosecuting and convicting marital rape offenders can present numerous challenges, which vary from one jurisdiction to another. Here are some common difficulties encountered in the legal process:

- 1. Lack of legal recognition:** In some jurisdictions, marital rape may not be explicitly recognised as a crime or may be subject to legal exemptions or lower penalties than other forms of rape. This legal gap can create barriers to prosecuting and convicting offenders, as the absence of a clear legal framework may lead to inconsistencies in enforcement and judicial interpretation.
- 2. Cultural and social attitudes:** Deeply ingrained cultural and social attitudes surrounding marriage, gender roles, and sexual autonomy can pose significant challenges. Victim-blaming, stigma, and societal expectations that prioritize preserving the sanctity of marriage over individual rights and bodily autonomy can discourage survivors from reporting the crime and hinder successful prosecutions (Torres, 2016).
- 3. Lack of reporting and evidence:** Marital rape often occurs within the privacy of the home, making it more challenging to gather evidence compared to public or stranger rapes. Survivors may fear retribution, societal judgment, or further harm within the relationship, leading to underreporting. The lack of physical evidence and corroborating witnesses can weaken the prosecution's case, making it harder to secure convictions.
- 4. Spousal privilege and testimonial immunity:** Legal principles such as spousal privilege or testimonial immunity can complicate the prosecution of marital rape cases. These doctrines protect marital communications and prohibit a spouse from being compelled to testify against their partner. While these principles

serve broader purposes, they can create obstacles in cases of marital rape where the survivor is the only eyewitness (Torres, 2016).

- 5. Burden of proof and consent challenges:** Proving lack of consent beyond reasonable doubt is crucial in rape prosecutions, including marital rape cases. Establishing non-consent within a marital context can be complex due to societal expectations of sexual availability within marriage. Perceptions that consent is automatically granted upon marriage or difficulties in proving lack of consent due to the absence of physical resistance can complicate the legal process.
- 6. Lack of specialised training and resources:** Law enforcement agencies, prosecutors, and judicial systems may lack specialized training and resources to handle marital rape cases effectively. Insufficient understanding of intimate partner violence dynamics and the unique challenges of prosecuting marital rape can hinder offenders' successful investigation, prosecution, and conviction.
- 7. Emotional and psychological trauma:** Survivors of marital rape often experience significant emotional and psychological trauma, impacting their willingness to engage with the legal process. The long-standing power dynamics within the relationship, fear of retaliation, and concerns about family disruption can further discourage survivors from pursuing legal action.

VICTIM BLAMING AND STIGMATIZATION

Victim blaming and stigmatization are, unfortunately, common responses to survivors of marital rape. These harmful attitudes and behaviour exacerbate the trauma experienced by survivors and contribute to the underreporting of incidents. Here are some key points to understand:

- 1. Blaming the victim:** Victim blaming occurs when the survivor is held responsible for the sexual assault or is perceived as having provoked or somehow caused the abuse. In marital rape, victim blaming can manifest through questions about the survivor's behaviour, clothing, or previous consent, implying that they are at fault for the assault. This blame-shifting undermines the survivor's credibility and can deter them from seeking help or reporting the crime (Singh, 2022).
- 2. Stigmatization:** Survivors of marital rape may face stigmatization within their communities, families, or social circles. Cultural and social norms prioritizing the preservation of family honour, societal reputation, or marital unity can shame and ostracize survivors who disclose their experiences. This isolation further contributes to the silence surrounding marital rape and can impede survivors' access to support services (Rao, Shah, & Arade, 2022).
- 3. Disbelief and Minimization:** Due to the intimate and private nature of marital relationships, survivors may encounter disbelief or minimization of their experiences when disclosing marital rape. People may find it difficult to accept that abuse can occur within a seemingly loving relationship, leading to skepticism, denial, or downplaying of the severity of the assault. This disbelief can further discourage survivors from seeking help or justice.
- 4. Cultural and Religious Factors:** Cultural and religious beliefs and practices can influence attitudes toward marital rape and the treatment of survivors. Some cultural and religious contexts prioritise the preservation of marriage or emphasise the subordination of women, which can contribute to victim blaming and stigmatization. These beliefs may reinforce the notion that marital rape is a private matter to be resolved within the confines of the relationship, rather than recognizing it as a crime.

5. Impact on survivors: Victim blaming and stigmatization have significant negative effects on survivors' well-being and recovery. They can lead to feelings of shame, guilt, self-blame, and isolation. The fear of being judged or not being believed can prevent survivors from seeking support, reporting the crime, or leaving abusive relationships.

BARRIERS TO REPORTING AND SEEKING JUSTICE FOR MARITAL RAPE VICTIMS

Marital rape victims face various barriers when reporting the crime and seeking justice. These barriers can be significant obstacles that prevent survivors from accessing the support and legal recourse they deserve. Here are some common barriers:

- 1. Societal stigma and shame:** Survivors of marital rape may fear societal judgment, stigma, and shame associated with disclosing the abuse. Cultural and social attitudes that blame or silence victims can make it incredibly difficult for survivors to come forward and share their experiences (Rana & Guleria).
- 2. Fear of retaliation:** Survivors often fear retaliation from their abusers, particularly when they are still in the same household or financially dependent on their spouse. The fear of further harm, emotional or physical, can deter survivors from reporting the crime and seeking justice.
- 3. Lack of awareness and understanding:** Many survivors may not recognise that what they have experienced constitutes rape or a criminal act. A lack of awareness about marital rape as a distinct form of sexual violence can prevent survivors from understanding their rights and the available legal remedies (Kallakaru & Soni, 2018).
- 4. Power dynamics and control:** Marital rape is often intertwined with power imbalances and control within the relationship.

Abusers may employ tactics such as gaslighting, manipulation, and emotional abuse to maintain control over their victims. This manipulation can undermine survivors' confidence, make them doubt their own experiences, and deter them from seeking help.

- 5. Lack of legal recognition:** In some jurisdictions, marital rape may not be explicitly recognized as a crime or may be subject to legal exemptions or lower penalties compared to other forms of rape. This legal gap can discourage survivors from reporting or pursuing legal action, as they may believe there will be little to no legal consequences for the perpetrator.
- 6. Inadequate legal systems and support services:** The availability and accessibility of legal systems and support services can vary significantly depending on the jurisdiction. Limited resources, long wait times, lack of specialized training for law enforcement and legal professionals, and insufficient support services for survivors can create significant barriers to seeking justice.
- 7. Dependence and financial considerations:** Survivors who are financially dependent on their abusers may face additional barriers to reporting and seeking justice. Concerns about economic stability, housing, child custody, and the overall disruption of their lives can complicate the decision-making process for survivors.

SUPPORT SERVICES FOR SURVIVORS

Support services for survivors of marital rape play a crucial role in helping them heal, regain control over their lives, and navigate the complex process of recovery. Here are some key support services available for survivors:

- 1. Helplines and hotlines:** Helplines and hotlines provide immediate and confidential support to survivors of marital rape. Trained professionals or volunteers offer empathetic listening, information, emotional support, and referrals to other services, such as

counselling, legal aid, or medical assistance (Deosthali & Rege, 2019).

- 2. Counselling and therapy:** Individual counselling or therapy can be instrumental in helping survivors of marital rape address trauma, manage PTSD symptoms, and develop coping strategies. Trauma-informed therapy, such as cognitive-behavioural therapy (CBT) or eye movement desensitization and reprocessing (EMDR), can be particularly effective in supporting survivors' healing journey.
- 3. Support groups:** Support groups bring together survivors of marital rape, allowing them to connect with others who have had similar experiences. These groups provide a safe and non-judgmental space for survivors to share their stories, gain validation, and receive support from peers who understand their challenges.
- 4. Legal support and advocacy:** Legal support services can guide survivors through the legal process, explaining their rights, assisting with filing reports, obtaining protection orders, and pursuing legal action against their abusers. Advocacy organisations can provide information about relevant laws, accompany survivors to court proceedings, and help them navigate the legal system (Anand, Lolaksha, & Bhushan, 2021).
- 5. Medical and healthcare services:** Medical professionals can provide survivors with comprehensive healthcare, including physical examinations, treatment for injuries, testing for sexually transmitted infections (STIs), and access to emergency contraception. They can also offer referrals for specialised services, such as forensic examinations.
- 6. Safety planning and shelter:** Safety planning involves working with survivors to develop strategies to increase their safety and reduce the risk of further harm. Domestic violence shelters or safe houses provide temporary accommodations, protection, and

support for survivors who need to escape from abusive relationships.

7. Financial assistance and resources: Survivors of marital rape may face financial challenges and economic dependence on their abusers. Financial assistance programs, job training, educational opportunities, and access to affordable housing can help survivors achieve financial independence and stability.

8. Community and faith-based organizations: Community organizations, including faith-based groups, can play a vital role in supporting survivors of marital rape. They can offer emotional support, counselling services, referrals to other resources, and community-based initiatives to raise awareness about sexual violence and promote healthy relationships.

PREVENTIVE MEASURES AND INTERVENTION STRATEGIES

EDUCATION AND AWARENESS CAMPAIGNS

Education and awareness campaigns are crucial in preventing marital rape and supporting survivors. By challenging societal norms, promoting consent, and educating individuals about healthy relationships, we can work towards creating a culture that rejects violence and respects the autonomy of all individuals (Kanodia & Ray, 2016). Here are some preventive measures and intervention strategies through education and awareness campaigns:

1. Comprehensive sex education: Implementing comprehensive sex education in schools and community settings is essential. It should include age-appropriate information on consent, healthy relationships, gender equality, and the recognition of different forms of sexual violence, including marital rape. Sex education can equip individuals with the knowledge and skills to navigate relationships based on respect and consent (Mehta, 2021).

- 2. Promoting gender equality:** Addressing gender inequality is fundamental in preventing marital rape. Education and awareness campaigns should challenge traditional gender roles, stereotypes, and harmful attitudes perpetuating relationships' power imbalances. Promoting gender equality empowers individuals to recognize and respect their partners' autonomy, agency, and rights.
- 3. Consent education:** Understanding consent is vital in preventing all forms of sexual violence, including marital rape. Education campaigns should emphasise the importance of enthusiastic and ongoing consent in sexual relationships. Teaching individuals about communication, boundaries, and respect for personal autonomy helps establish healthy relationship dynamics.
- 4. Redefining masculinity:** Education and awareness campaigns should address harmful masculinity norms perpetuating marital rape. Encouraging positive and healthy expressions of masculinity, such as empathy, respect, and emotional intelligence, can help challenge toxic beliefs and behaviours associated with dominance and control.
- 5. Breaking the silence:** Education campaigns should aim to break the silence surrounding marital rape and encourage survivors to come forward. By fostering an environment of support, understanding, and empathy, campaigns can empower survivors to seek help, access support services, and report the abuse.
- 6. Training for professionals:** Professionals working in healthcare, education, law enforcement, and the legal system should receive training on recognizing and responding to marital rape. This includes understanding the dynamics of abuse, trauma-informed practices, and the importance of providing supportive and non-judgmental services to survivors.
- 7. Engaging men and boys:** Engaging men and boys as allies and advocates in preventing marital rape is crucial. Education

campaigns should encourage discussions on healthy masculinity, respectful relationships, and the responsibility to challenge and address violence against women actively.

8. Collaboration and partnerships: Education and awareness campaigns should involve collaboration between government agencies, non-governmental organisations, community leaders, and activists. By working together, resources can be pooled, and messages can be disseminated effectively to reach a wider audience.

9. Utilising media and technology: Utilizing various forms of media, including television, radio, social media, and online platforms, can amplify the messages of education and awareness campaigns. Engaging storytelling, public service announcements, and online resources can raise awareness, challenge misconceptions, and provide information and support for survivors.

POLICY REFORMS AND LEGAL AMENDMENTS

Policy reforms and legal amendments play a critical role in preventing marital rape and providing justice and support to survivors. Here are some preventive measures and intervention strategies that can be implemented through policy reforms and legal amendments:

1. Criminalization of marital rape: One of the most crucial steps is the complete Criminalization of marital rape. Legal reforms should remove any exemptions or loopholes that currently exist, making it clear that non-consensual sexual acts within a marital relationship are illegal and punishable offenses.

2. Clear definition and consent standards: Policy reforms should provide a clear and inclusive definition of marital rape, highlighting that consent is required in all sexual acts, regardless of the relationship between the individuals involved. This definition should emphasize that consent must be freely given, enthusiastic,

and ongoing, and that coercion or the absence of resistance does not imply consent.

- 3. Removal of spousal immunity:** Policy reforms should eliminate any legal provisions that grant spousal immunity, which currently protect perpetrators from prosecution for sexual offenses against their spouses. Removing spousal immunity ensures that marital rape is treated equally under the law and allows survivors to seek justice.
- 4. Strengthening reporting mechanisms:** Policy reforms should focus on improving reporting mechanisms for marital rape. This can include creating specialised units within law enforcement agencies trained in handling cases of intimate partner violence, ensuring privacy and confidentiality during the reporting process, and providing survivors with information about their rights and available support services.
- 5. Protection orders and restraining orders:** Policy reforms should enhance the availability and effectiveness of protection orders and restraining orders for survivors of marital rape. These legal tools can provide immediate safety and restrict the contact and proximity of the perpetrator, allowing survivors to remove themselves from abusive situations and seek support.
- 6. Training for legal professionals:** Policy reforms should include mandatory training for legal professionals, including judges, prosecutors, and lawyers, on the dynamics of marital rape, trauma-informed practices, and the importance of sensitivity and empathy when working with survivors. This training ensures that legal professionals are equipped to handle these cases effectively and support survivors through the legal process.
- 7. Support services and resources:** Policy reforms should prioritise the allocation of resources for support services for survivors of marital rape. This includes counselling, medical services, shelter facilities, and legal aid funding. Additionally, establishing

specialised support centres that offer comprehensive assistance, including trauma-informed counselling, legal guidance, and advocacy, can ensure survivors can access the help they need.

8. Public awareness campaigns: Policy reforms should incorporate public awareness campaigns that challenge societal attitudes, debunk myths, and raise awareness about marital rape as a serious crime. These campaigns can help change social norms, reduce victim-blaming, and encourage reporting while informing the public about available support services.

9. International commitments and collaboration: Governments can strengthen their commitment to addressing marital rape by ratifying international conventions and agreements that specifically recognise marital rape as a violation of human rights. Cooperation with international organisations and sharing best practices can help develop effective prevention, intervention, and support strategies.

FUTURE DIRECTIONS AND RECOMMENDATIONS

IDENTIFICATION OF LEGAL LOOPHOLES

Identifying legal loopholes is indeed a crucial step in reducing marital rape and ensuring justice for survivors. However, addressing marital rape requires a multi-faceted approach that encompasses legal reforms as well as other complementary measures. Here are some future directions and recommendations to reduce marital rape:

1. Strengthening legal frameworks: Identification of legal loopholes by explicitly criminalizing marital rape and removing any exemptions or spousal immunity provisions. Ensure that the law clearly defines marital rape, establishes consent as the fundamental basis for sexual activity, and imposes appropriate penalties on offenders.

- 2. Enhancing enforcement and prosecution:** Improve law enforcement responses to marital rape cases by providing specialized training to police officers, prosecutors, and judges on recognizing, investigating, and prosecuting cases of marital rape. This includes ensuring sensitivity, empathy, and trauma-informed approaches are incorporated into the criminal justice system's handling of such cases.
- 3. Improving access to justice:** Enhance survivors' access to justice by removing barriers that hinder reporting and seeking legal recourse. This includes addressing issues such as fear of reprisal, lack of awareness of rights and legal options, and limited access to legal aid services. Provide support, guidance, and protection to survivors throughout the legal process.
- 4. Raising public awareness:** Conduct comprehensive public awareness campaigns that challenge societal attitudes, myths, and misconceptions surrounding marital rape. These campaigns should emphasize the importance of consent, gender equality, and respect within intimate relationships. Engage various media platforms and community organizations to reach a wide audience and foster social change.
- 5. Strengthening support services:** Ensure the availability of comprehensive and survivor-centred support services for survivors of marital rape. This includes counselling, medical assistance, shelter facilities, legal aid, and economic empowerment programs. Allocate resources to enhance the capacity and accessibility of these services, particularly in underserved areas.
- 6. Promoting education and prevention:** Implement comprehensive and age-appropriate sex education programs that address consent, healthy relationships, gender equality, and recognise different

forms of sexual violence, including marital rape. Promote and educate initiatives that challenge harmful gender norms, stereotypes, and power imbalances within relationships. Educate individuals about their rights and the importance of respect, communication, and consent in intimate relationships.

- 7. Engaging men and boys:** Encourage the active involvement of men and boys in efforts to prevent marital rape. Implement programs that promote positive masculinity, respectful relationships, and gender equality. Engage men as allies and advocates to challenge and address violence against women and promote healthy relationship dynamics.
- 8. Research and data collection:** Conduct research on the prevalence, causes, and consequences of marital rape to inform evidence-based policies and interventions. Collect comprehensive data on reported cases, conviction rates, and barriers to justice to assess the effectiveness of legal reforms and support services.
- 9. International cooperation and sharing best practices:** Foster international cooperation and collaboration to share best practices, experiences, and lessons learned in addressing marital rape. Engage with international organizations, networks, and initiatives that focus on gender equality, human rights, and ending violence against women.
- 10. Empowering survivors:** Empower survivors of marital rape by providing them with resources, support, and opportunities for healing, economic independence, and rebuilding their lives. Promote survivor leadership and participation in decision-making processes, advocacy efforts, and awareness campaigns.

CONCLUSION

Worldwide recognition of the violation of fundamental human rights by gender-based violence against women. The costs of such violence in terms of health, intergenerational repercussions, and demographic effects are being studied more and more. The United Nations defines gender-based violence as any act of violence that causes women, girls, men, or boys to suffer physically, sexually, or psychologically, as well as any threats of such actions, coercion, or the wilful restriction of liberty. The main effects of domestic abuse, one of the most prevalent types of gender-based violence against women, are highlighted in this chapter. Under Indian Penal Code 498-A, domestic abuse has been recognised as a criminal offence since 1983. However, it wasn't until the Protection of Women from Domestic Violence Act of 2005 that it became law. Which came into effect in 2006, that civil protections were afforded to victims of domestic violence. The PWDVA offers a comprehensive definition of domestic violence that covers all types of actual acts of such violence as well as threats of such actions. This term includes all forms of physical, emotional, verbal, sexual, and economic assault. The PWDVA also classifies harassment in the form of illegitimate dowry demands as abuse, including marital rape. The Act stipulates that protection officers must be appointed to help victims, and it further emphasizes the significance of cooperation between the government and outside groups in defending women. The PWDVA has been expanded to protect other women residing in a family, such as spouses and female live-in partners from being subjected to domestic violence by their husbands, male live-in partners, or their relatives.