

CONSTITUTIONALITY AND LEGALITY OF MARITAL RAPE IN PAKISTAN

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ABSTRACT

“Marital Rape”, a phrase laden with numerous stigmas, becomes even more complex when attempting to contextualise it within the societal framework of Pakistan. Society has granted husbands unrestricted control while relegating the wives to a state of submission, culminating in a scenario where the choices of a woman are severely neglected. The lack of recognition of marital rape as a real issue is intricately linked to the prevailing conservative mindset within society. This research paper discusses the constitutional rights of women and addresses why the recognition and express legislation on marital rape is pertinent in current circumstances. This paper addresses multiple challenges faced by women in Pakistan bound in marital relationships and discusses the trauma suffered by women who are subjected to marital rape. Through a meticulous legal discourse, the objective is to construct a cogent argument encompassing both constitutional and legal dimensions of marital rape. Central to this paper is advocating for the introduction of a dedicated legal provision that unequivocally acknowledges marital rape as a distinct and punishable offence.

Key words: Marital Rape, Section 375, PPC, Fundamental Rights, Sexual Abuse, Intercourse, Violence

1. INTRODUCTION

“Marital Rape”, a phrase laden with numerous stigmas, becomes even more complex when attempting to contextualize it within the societal framework of Pakistan. Pakistan is a country where the institution of marriage is deemed sacred. Societal norms, conventional practices, and religious beliefs largely regulate the relationship between a husband and a wife. However, ideas such as patriarchy, gender norms, misogyny, male chauvinism, and discrimination have crept into this sacred spousal relationship. Consequently, this disparity results in an imbalanced status within the marital union, giving rise to a myriad of issues concerning consent, autonomy, and even the violation of fundamental human rights, particularly in the context of marital rape within Pakistani society.

Society has granted husbands unrestricted control while relegating the wives to a state of submission, culminating in a scenario where the choices of a woman are severely neglected. This has contributed to a prevailing perception that a husband possesses certain inherent rights over his wife, including sexual intimacy. Pakistani Women are expected to obey their husband’s wishes and commands in terms of sexual relationship, which help sustain male domination through oppression and intimidation (Khan, 2020).

The lack of recognition of marital rape as a real issue is intricately linked to the prevailing conservative mindset within society. Discussions around sexual intercourse remain largely prohibited in social discourse, cloaked in taboo. Those daring to broach the subject face social stigma, as matters of sexual intimacy are perceived as the utmost “private affair” solely confined to the realm of husband and wife (Kunwar, 2022). Lack of discourse on the subject has led to a situation where the gravity of marital rape is neither understood nor recognised within the social or legal realm. However, non-recognition does not mean that the problem does not exist, as per a survey conducted in 2003 in Islamabad and Rawalpindi, 46.9% of women faced non-consensual sex at the hands of their spouses (Roghani, 2018). As per the recent survey conducted by UN Women, 24.5% of women between the ages of 15-49 face sexual intimate partner violence at least once in their lives (UN Women).

The silence surrounding marital rape extends beyond societal confines; it is deeply entrenched in the legal domain. While the Pakistan Penal Code (PPC) 1860 acknowledges rape as an offence under section 375, it notably neglects to address marital rape explicitly. The gravity of this issue gains historical significance when viewed through the lens of the Hudood Ordinance of 1979. This Ordinance not only dismissed the notion and existence of marital rape but also held women accountable for fornication if insufficient evidence of rape was presented. Paradoxically, this ordinance was enacted in the same year as the establishment of CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) (Zaman & Zia, 2012).

The notion of a husband committing rape against his wife was once deemed unimaginable, as highlighted by section 375 of the PPC, which explicitly stated, “A man is said to commit rape if he has intercourse with a woman, who is not his wife. This provision unmistakably excluded the possibility of recognizing marital rape as an offence. Subsequent change came about through the 2006 amendment, which saw the removal of the phrase “who is not his wife”. This alteration triggered widespread speculation regarding

its implications for marital rape, raising questions about whether such acts could now be addressed within the framework of the current legal regime.

Despite the legislature's limited attempts to address this matter, there remains a conspicuous absence of any reported cases of marital rape under Section 375 of the PPC. This can be attributed to the legislature's failure to acknowledge it as a separate offence. Illustrating this issue is the recent "Multan Case", where a woman lodged a complaint against her husband for marital rape under section 377 of PPC (unnatural offences), a disconcerting scenario (Nisar, 2018). Instances of marital rape are predominantly handled under domestic violence laws, a practice that severely undermines the gravity of the offence. Due to the mischief found in section 375 PPC, complainants resort to alternative legal provision, which ultimately results in lesser sentencing even though the victim may suffer the same physical and mental trauma as a stranger rape victim.

The Constitution of Pakistan, 1973, ensures fundamental rights for all citizens, irrespective of gender, race, caste, or creed. In chapter II, these rights encompass essential freedoms, such as the right to life, human dignity, and equality. The focal point of this paper addresses a foundational aspect of any democracy; the promotion of equality and freedom. Marital rape not only subverts individual choices but also encroaches upon the right to life, human dignity and the very essence of equality.

This paper aims to conduct a comprehensive analysis of the Constitution of Pakistan and complementary legal frameworks concerning marital rape. Given the absence of a specific provision that criminalizes marital rape, this issue remains largely unaddressed, thereby undercutting the foundational rights of those embroiled in such circumstances. Moreover, this paper would delve into an exhaustive examination of pertinent case laws, domestic legislation, international statutes, and Islamic constitution. Through a meticulous legal discourse, the objective is to construct a cogent argument encompassing both constitutional and legal dimensions of marital rape. Central to this paper is advocating for the introduction of a dedicated legal provision that unequivocally acknowledges marital rape as a distinct and punishable offence. In doing so, the paper endeavors to contribute to the ongoing dialogue regarding the critical need for legal reform in this domain.

2. RESEARCH METHODOLOGY

This study employs a qualitative doctrinal research methodology, examining statutory provisions, constitutional guarantees, case law, and international human rights instruments. A comparative legal analysis of South Asian and Muslim-majority jurisdictions is integrated to highlight reform trajectories, while secondary sources—such as academic literature, policy briefs, and NGO reports inform the discussion of enforcement challenges and social barriers. The methodology is also normative, assessing the Pakistani framework against international standards to argue for explicit criminalization and robust victim-protection mechanisms.

3. HISTORY OF RAPE LAWS IN PAKISTAN

Pakistan is an offspring of colonialism, with its laws and legal system deeply entrenched in colonial mind-sets. Since its inception, Pakistan has continuously suffered in terms of its identity and struggled between maintaining its religious values and status while simultaneously trying to cope with liberal values. Between these struggles, the women of Pakistan have become the true victim. The rape laws in Pakistan have affected none the most, than the women of Pakistan, and historical evolution of these laws is a testament to the adverse effects these have had on women. Since 1947, the rape laws were codified in the Pakistan Penal Code (PPC), Section 375, which defined rape as non-consensual sexual intercourse with a woman who is not a wife (Sheikhani, 2023). At the outset, it is apparent that no effort has been made to include or recognize marital rape within this framework, and it may be understandable, given the mind-set of the colonial powers who ruled the sub-continent, however, what is most shocking is that Pakistan never attempted to bring evolution in section 375, rather what followed was a horrendous tale of violence, abuse, and mistreatment against women under the garb of these rape laws which were meant to protect women, but ended up protecting the men (perpetrators).

The history of rape laws in Pakistan and the tale of horror cannot be complete without the mention of the infamous Hudood Ordinances. Enacted in 1979, by General Zia-ul-Haq, were meant to bring the laws of Pakistan into 'conformity' with the injunctions of Islam (Quraishi, 1997). The Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979, criminalizes Zina (extra-marital sexual relations). The Zina Ordinance, Sections 4 & 5 state:

"A man and a woman are said to commit 'zina' if they willfully have sexual intercourse without being validly married to each other."

"Zina is liable to had [punishment] if-

(a) it is committed by a man who is an adult and is not insane with a woman to whom he is not, and does not suspect himself to be married; or

(b) It is committed by a woman who is an adult and is not insane with a man to whom she is not and does not suspect herself to be married.”

A point of interest for this paper is that the definition, very explicitly, disregards the idea of marital rape. The words “without being validly married to each other” mean that a man can never commit Zina (rape) against his wife. Where two people are tied in a marital bond, the question of rape leaves the equation instantly and entirely. The Zina Ordinance was meant to bring the law in conformity with Islam; however, how much of this was in line with the teachings of Islam would form part of this paper in later sections, but it can be safely said that the Zina Ordinance did not get much appreciation from the masses (Lari, 2014). The Zina Ordinance did not just attack the women bound in a marital relationship; rather, it attacked the credibility of an entire gender and a few cases can be illustrated to prove the same.

In 1983, a fifteen-year-old girl was charged with adultery after she filed a complaint of rape against her perpetrators; however, due to a lack of four witnesses and her pregnancy, she was charged with the offence of adultery and punished (Quraishi, 1997). The matter was decided by the Federal Shariat Court in PLD 1983 Fed. Shariat. Ct 183. Another case was of a blind domestic servant who was repeatedly raped by her employer and his son; however, on account of not being able to produce four eye witnesses of the event, the girl was instead punished for Zina and punished with 15 lashes, 3 years imprisonment and a fine (PLD 1985 Fed. Shariat. Ct 120). These cases reveal a major flaw in the legal framework as it conspicuously ignored the fact that rape is an offence which happens under duress and secrecy, and it is usually a herculean task to produce even one witness in such cases, and the state was requiring four witnesses of the same. The apparent bias of the system against women is reflected in these decisions, as the struggles and sufferings of women are completely ignored, and men go scot-free even after committing the most horrible crimes.

In a scenario where stranger rapes were being labelled as adultery and fornication, the idea of punishing marital rape seems almost unreal. This harsh evolution of laws and a constant tug-of-war between Islamic laws, Shariah and Modern laws, marital rape never became the topic of discussion, and women in marital relationships continued to struggle in silence without a ray of hope. However, changes were made to the rape laws post-2006 amendment, which broadened the scope of the definition of rape, including male victims of rape and same-sex rape cases (Sheikhani, 2023). After 2006, multiple amendments came that not only neutralized the definition from a gender perspective, rather it also included child abuse, etc. The Anti-Rape (Investigation and Trial) Act 2021 provided for speedy and expeditious trials for rape cases and sought a conclusion of trial within six months.

3.1 Scope Of Marital Rape in the Current Legal Framework

As already mentioned, Pakistan’s rape laws underwent significant changes post 2006 amendment, and the most notable amendment came in 2020 through the Criminal Law (Amendment) Ordinance, 2020 (Bilal, 2021). One of the things that stood out the most within this amended legal framework was the gender neutralized definition of rape. Under the current legal framework, the definition has been made gender specific not only from a victim’s perspective but also from a perpetrator’s perspective, thus women, men, and transgender are covered under this framework and men can equally be victims of rape as women.

The 2020 amendment is not only revolutionary from a gender perspective, rather, it has broadened the scope and types of rape that may be included in the definition. Section 375 of PPC, post 2020 amendment is reads as follows;

“375. Rape.

- A person (A) is said to commit “rape” if A—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of another person (B) or makes B to do so with A or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of B or makes B to do so with A or any other person; or

(c) manipulates any part of the body of B so as to cause penetration into the vagina, urethra, anus or any part of body of B or makes B to do so with A or any other person; or

(d) applies his mouth to the vagina, anus, urethra or penis of B or makes B to do so with A or any other person, under the circumstances falling under any of the following seven descriptions:

firstly, against B’s will;

Secondly, without B's consent;

thirdly, with B's consent, which has been obtained by putting B or any person in whom B is interested, in fear of death or of hurt;

fourthly, with B's consent, when A knows that A is not B's husband and that B's consent is given because B believes that A is another man to whom B is or believes herself to be lawfully married.

fifthly, with B's consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by A personally or through another of any stupefying or unwholesome substance, B is unable to understand the nature and consequences of that to which B gives consent;

Sixthly, with or without B's consent, when B is under sixteen years of age;

seventhly, when B is unable to communicate consent."

Explanation 1.

"For the purposes of this section, "vagina" shall also include labia majora."

Explanation 2.

"Consent means an unequivocal voluntary agreement when B, by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that if B, who does not physically resist the act of penetration, it shall not, by reason only of that fact, be regarded as consenting to the sexual activity."

Explanation 3.

"In this Chapter: -

"person" means a male, female or transgender.

"rape" includes "gang rape"."

Exception.

"- A Bonafide medical procedure or intervention shall not constitute rape."

The use of the word 'person' in this definition is significant and central to its gender-neutral perspective. Now if a man is raped by a man or a woman, or woman is raped by a man or a woman, both these situations are covered under this definition. But what is most important for the purposes of our paper is that the words "who is not his wife" or "whom he is not validly married to" have been removed, signifying the implication of marital rape within this framework.

However, one significant thing to note is the specific mention of gang rape within the definition, but the lacuna that still exists is that despite the broad scope of this definition, marital rape is not explicitly mentioned.

The failure to explicitly mention marital rape in section 375 has some dire consequences for women in marital relationships who may be raped at the hands of their husbands/spouses but cannot bring a case under section 375 PPC. This creates a major hurdle in the recognition of marital rape on a larger scale and spousal rape is still not labeled as rape. Another provision in the PPC is section 377 which relates to *unnatural offences* and carnal intercourse, under which a person can be charged with *sodomy* (intercourse against the order of nature) (Shah, Nasreen & Ali, N.D). Due to the lacuna present in the definition, wherein, we find no explicit mention of marital rape, cases of marital rape (rarely reported) are registered under section 377 of the PPC.

The most significant example of marital rape being considered sodomy is the recent and landmark ruling given by the Sindh High Court. A man has been sentenced to three years in prison for sodomising his wife which was medically proven (Huzaifa, 2024). This ruling, though landmark and crucial to combat violence against women, still lacks recognition as marital rape or rape under the correct and appropriate legal provision. Although sodomy is also covered in the current definition of rape under section 375, but still the case was brought under 377 (DAWN, 2024). The main issue with bringing the case under 377 rather than 375 is that the perpetrators receive way less punishment than they should. For instance, three years imprisonment for a crime of rape/sodomy seems lenient in the circumstances, and gives the impression that intimate partner violence or spousal rape is less grave as opposed to stranger rape.

3.2 Consent in a Marital Relationship

Marital rape, for all means and purposes, is rape, and there is no other term better suited to describe the same. Marital rape has all the elements of stranger rape, for instance, lack of consent, forceful intercourse, violence, and unequal power dynamics (Dhankhar, 2024). Consent forms the basis of a marital relationship, whereby a husband and wife vow and consent to become each other's partner; however, in societies like India and Pakistan, the consent of wives once given through a marriage contract is understood to be irrevocable. Despite this common misconception, the notion of consent in marriage has undergone significant change marked by a shift in public discourse; for instance, women in America began demanding equal rights and sexual autonomy for themselves in the 20th century (Upadhyay, 2024). This led to increased discussions on women's bodily autonomy and their ability to say "no" to their husbands.

Consent is defined as "a person's voluntary and willful agreement to another person's proposition" (Legal Information Institute). Consent is also defined in section 375 of the PPC as "*Consent means an unequivocal voluntary agreement when B by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.*" By this definition of consent, it is apparent that consent must be express and must be communicated to other person, however the definition took the consent in rape cases a little further by stating that if a person does not physically resist to the sexual act, it would not be automatically considered as consent as a victim may respond with fight, flight or freeze (Haskell & Randall, 2019). It is a progressive approach taken by lawmakers, as every victim has a different trauma response. As Honorable Justice Ayesha Malik has also held in Criminal Petition No. 725 of 2023 that "physical resistance need not be established in rape cases as different people react differently when confronted with trauma, and to subject all women to a stereotypical assumption that she must *resist* in a particular form to establish rape is totally without basis". Thus, where a person is not able to physically resist the act of rape, the same does not amount to consent.

As previously mentioned, consent in a marital relationship is presumed to be irrevocable as the wife becomes the husband's property, perpetually bound to him, unqualified to revoke any sexual advance. Catharine A. MacKinnon, in her research, has dissected this jarring reality of women in marital relationships. She has masterfully presented the idea that a woman's consent depends upon who she is relative to a man who wants her. She has placed wives and prostitutes in a single category as opposed to virgin women (MacKinnon, 1989). Wives are considered as unrapable, and their consent is generally presumed to be immaterial to the whole scenario. Victims of stranger rape may experience rape only once and escape the situation, however victims of marital rape, or the wives are forever stuck and tied in this vicious cycle of abuse, where if they said *yes* one day they cannot say *no* the next, revealing a gruesome reality of marital rape and while men (husbands) may view this as nothing more than intercourse (their right) but for a woman forceful intercourse without their consent is rape and equally demeaning and hurtful as stranger rape.

Consent is material in any situation and under all circumstances, and where the other person by word or conduct shows even the slightest unwillingness to engage in sexual relations, the same would fall within the ambit of rape. A ruling by a Division Bench of Nepal Court [Case No. 3434 of the Year 2004] interpreted consent and sexual misconduct as one performed physically, verbally, or in writing without a person's consent. In another ruling, the court said that "if a man subjects a woman to the inhumane criminal act of rape, in the absence of her consent, then the man cannot receive immunity from criminal liability merely because the victim is his spouse.

"The law recognizes consent as the basis of marriage and in the absence of consent, marriage cannot be solemnised, and therefore, sexual relationships even after solemnization of marriage cannot be established in the absence of consent between a husband and wife. Sexual relationships in the absence of consent are an act of rape" [Case no.55 of Year 2011].

Both these rulings highlight the importance of consent in a marital relationship and unequivocally held that any sexual relation in the absence of consent is rape.

3.3 Effect of Rape on Married Women

Rape is a gendered crime, which is often accompanied by other forms of violence such as assault, battery, and physical violence and abuse. It is common knowledge that victims of rape suffer immeasurable harm in terms of mental and physical health, in fact in some case end up getting pregnant due to the rape committed against them. Victims of sexual assault may experience the impact over short and long period of time (Chivers & Wilson, 2006). Where the trauma of victims of stranger rape is recognized globally, though in different senses, the trauma of married women is perceived to be less then, as they must anticipate or expect sexual activity from their spouse. But the important question that is central to not only the recognition of marital rape but a compelling ground for making it a separate offense within the legislative framework, is the impact of marital rape on women (spouses).

The reasoning that is brought forward in defense of marital rape is that since the victim knew her perpetrator or was already engaged with him in sexual relationship, the trauma or impact of violent intercourse is not nearly as severe as victims who were not intimate with their perpetrators (People V. Brown). This view has lingered on for so long, plaguing the discourse on marital rape, undermining and overlooking the trauma suffered by thousands of women in marital relationships. While this view is common, what is also common is that women are more likely to get raped by men they know and men they are in intimate with (Kalra & Bhugra, 2013). Another important aspect to counter the notion of “*non-traumatic marital rape*” is that women feel as or more traumatized being raped by someone they know or trust (MacKinnon, 1989). As per Chivers & Wilson, when women know their perpetrator and believe them to be safe and trustworthy, the trauma response is much severe, leading to self-blaming and shame, which ultimately forces her to stay silent, thereby aggravating her trauma.

What must be asked of those who question the recognition of marital rape as a separate and distinct offence as compared to physical assault and violence (domestic violence), is what is the distinction between physical violence where a man hits a woman and sexual violence where he has intercourse with her against her will, sometimes also coupled with violence. The counterarguments, however, will be found insufficient (Randall & Venkatesh, 2015). Getting hit by a man and getting sexually violated are not so different from each other; however, society is quick to reprimand the former, rather than neglecting the latter as a “private affair”. Is getting raped by a spouse somehow less severe than getting hit by them?. As evidenced above, women who get raped by intimate partners are likely to be more traumatized, where they end up questioning their own sanity as to whether such behavior be considered normal or not. Hence, women in marital relation are equally harmed from unwanted sexual activity.

The discourse on marital rape in Pakistan is limited, and the case law offers little to no insight into the adverse effects of rape on married women. Therefore, for the purpose of research, cross-country persuasive sources are central in order to gauge the correct interpretation of marital rape. The special bench of Nepal in Case No/Writ No. 56 of the year 2001 [Advocate Sapana Pradhan Malla v. HMG, Ministry of Law, Justice and Parliamentary Affairs] commented on marital rape and declared that, “*Rape is rape, regardless of whether the victim is married or single, minor or matured, or engages in prostitution. The physical and mental injury that a woman endures after an act of sexual violence is the same in nature*”.

Additionally, in Case no.55 of Year 2011, the court of Nepal once again held that a crime is committed by a criminal act and not according to differences in the status of the perpetrator. These cases clearly indicate the intention behind the laws and the clear interpretation done by the court. These decisions serve as a guiding light in terms of jurisprudence on marital rape and signify that the status of the perpetrator cannot negate the crime, as the effect on the victim is forever the same.

3.4 Case Studies of Marital Rape in Pakistan

The Demographic and Health Survey (DHS) conducted in Pakistan in 2017-18 contained horrifying details regarding domestic violence in Pakistan. Chapter 16 of their annual report shed light on the subject and stated that 1 in every 3 women in Pakistan reports physical or sexual violence against her spouse (DHS Program, 2018). UN Women (Pakistan), 2017-2021, had detailed that 24.5% of women aged 15–49 in Pakistan have experienced sexual intimate partner violence at least once in their lifetime. These demographics highlight a chilling reality and the fact that marital rape is very much real.

A recent case reported in Lyari, Karachi, has sent chills down everyone’s spine as a 19-year-old newly married girl was violently and viciously raped by her husband. The woman suffered injuries indescribable (Ebrahim, 2025). “Her insides were torn, she was bleeding profusely from her anus and writhing in pain”, said an activist from her neighborhood (DAWN, 2025). Her husband inserted a metal pipe, followed by his hand and arm in her anus, bit her breasts and neck and threatened to kill her if she told anyone. Another stark reality highlighted in this incident is the enablers, who try their very best to hide the violence, portraying it as normal or rather a husband’s right over his wife. “*We went to see her ... she lay motionless, and her mother-in-law claimed it was just diarrhea and her period, so we left, not realizing how serious it was,*” said Sonya (DAWN, 2025). A case has been registered against her husband for murder.

It is not only women who come from humble backgrounds or rural areas who are raped; rather, this is rampant even in urban areas, and women with PhDs aren't able to stop their husbands. Testimonies from Doctors posted in The Express Tribune demonstrate physical and medical trauma suffered by married women in Pakistan. "I had warned her not to get pregnant because she had severe diabetes. I told her that her life was at risk, but she chose abortion over contraception. Now she is dead," Dr Humayun said. A PhD student said, "The coil ruined my health, but it was the only contraception I could use without my husband finding out," she said, adding that doctors had prohibited her from intercourse, but her husband refused to listen to her. "I have no choice in the matter. I have to do whatever he tells me," she said.

A further religious aspect is attached to the taboo that is Marital Rape. Women have long heard the famous Hadith, of the angels cursing them through the night if they refuse intercourse with their husband whatsoever. This hadith has been weaponized by men to justify their insatiable need & desire for intercourse and their utter disregard for women's physical and mental health. For instance, a woman contracted an STD because of her husband's multiple sexual relations. "*He abuses me, but I cannot refuse him. My family told me that it was my religious duty to do as he demanded and that if I refuse, the angels will curse me all night,*" she told doctors (The Express Tribune, 2011). Women are gaslighted by their husbands to think that if they fail to fulfill their religious obligation, they will go straight to hell. "My husband would tell me that the angels would curse me for denying him(sex)," she said. "He would say if I pleased him in bed [that] I would go to heaven directly, and if he was angry with me, no matter what I did, I would go to hell", she further explained (Pakistan Today, 2022).

The doctors at several hospitals have testified to seeing many cases of marital rape and non-consensual intercourse. Most women have severe vaginal tearing and heavy bleeding, and even when the doctors prohibit the couple from having intercourse for some time, they almost always come back with the same problem. Lack of counselling before marriage, sex education, and a strong financial standing were cited as some of the reasons for the prevalence of marital rape by the experts. The women suffer but are never told that they have been sexually assaulted; thus, the society acts as an enabler and abettor in these crimes against women

3.5. Analyzing Constitutional Rights of Women

The constitution of Pakistan, 1973, is the supreme law of the land and guarantees fundamental freedoms for every citizen regardless of gender or sex. Anything which is repugnant to the fundamental rights guaranteed under the Constitution is struck down, as an embargo cannot be placed on the fundamental freedoms of the people of Pakistan. The preamble of the Constitution of Pakistan states the following:

'Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.

Therein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice...'

The preamble of the constitution offers an insight into the fundamental rights guaranteed under the constitution, and therefore, every person would be equal in status without discrimination based on sex, race, color, caste, creed, etc. (Law & Justice Commission of Pakistan, n.d). It can be easily inferred that there is no difference between the status of a woman and a man in Pakistan and both genders are to be treated equally.

Article 9 of the Constitution guarantees "*Right to Life*" of every person and that no person would be deprived of life or liberty save in accordance with law. The word life has a very wide meaning, and the same must not be restricted to life or death, and deprivation of the same does not only mean taking someone's life. In the infamous case of Shehla Zia v. WAPDA [PLD 1994 SC 693], the Apex Court of Pakistan interpreted the right to life and held that "The word life is very significant as it covers all facets of human existence. The word life does not mean nor can it be restricted only to the vegetative or animal life, or mere existence from conception to death. The word "Life" includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. It is pertinent to note that, as per the court's reasoning, a person's right to life is not restricted to merely existing; rather, it is interlinked and intertwined with his/her right to dignity.

Once again, the question that begs itself is whether the right to life and dignity as enshrined under articles 9 and 14 of the Constitution of Pakistan operate against a married woman? Is a married woman not entitled to the same rights and liberties as a married man, and is her right to life less than other unmarried women? The answer to all these questions can only be in the negative in the theoretical sense, meaning that the articles of the constitution and precedents suggest that women are equal to men and possess the same rights and liberties as any other citizen of the state. They have the right to enjoy their life and spend it with dignity. However, the situation in practice suggests otherwise, as 30-40% of women, on average, are subjected to spousal violence (DAWN, 2024). Marital rape constitutes a violation of a woman's right to life and dignity, and equality as guaranteed in the Constitution.

The question of the constitutionality of marital rape has not been dealt with by Pakistani Courts yet; however, the matter is pending before the Indian Supreme Court after a petition was brought by a woman against her husband for rape (Supreme Court Observer). The key issues before the court include the question of women's right to privacy, her right to equality and similar legal remedies as unmarried women and her unequal status as men in a marriage (Supreme Court Observer). Although these issues arose from the exception that exists in section 375 of the Indian Penal Code which explicitly exclude marital rape, and Pakistan has already done away with this exception years ago, however, somehow the cases of marital rape are still brought under section 377 (Unnatural Offences) of PPC considering it sodomy, rather than calling it what it truly is, i.e. marital rape. The Indian High Courts have held that this provision violates a woman's right to life by denying her bodily autonomy and agency, and her right to equality by denying her the same rights and status as men in a marital relationship (Rajagopal, 2024).

Elizabeth Wicks, in her research, has focused on the interconnectedness of the right to life and the right to dignity. The research has highlighted that dignity is the underlying principle in the interpretation of the right to life (Wicks, 2012). Right to life, as per the writer, has two limbs; the first one relates to conditions necessary for life to continue. These include some basic economic and social needs, such as employment, preservation of life, health, family life, etc. The second limb of this interpretation relates to the need for some basic level of protection regardless of a person's legal status. This notion that every person needs some sort of protection, and their legal status does not matter, goes to the very core of my argument as defenders of marital rape often propose that married woman cannot be raped by her spouse, solely because her legal status is changed and she has become a spouse, and that a husband has sexual rights over his wife. Hence, protection afforded to a woman by means of her right to life is somehow magically waived off when she is in a marital relationship and all forms of sexual abuse become legal by means of a marriage contract.

The notions of dignity, freedom and equality become worthless when a woman is raped by her spouse. Not only does this strip her of her dignity and take away her sense of individual identity, but it also affects her mental and physical health, which are implicit within her right to life. Right to bodily autonomy, as enshrined in multiple international legal instruments, such as CEDAW, DEVAW, UDHR, etc., is also violated when a woman is subjected to unwanted sexual intercourse (Rajput, 2024). Unwanted pregnancies as a consequence of marital rape are also an issue which has largely gone unaddressed, and in underdeveloped countries, almost 33% of unwanted pregnancies are a result of spousal sexual violence (Kasonde et al., 2022). These statistics prove that women's fundamental rights as guaranteed under the Constitution of Pakistan 1973, are violated most in a marital relationship, where she is not just denied the right to life and dignity, but also brings into question notions of gender equality and freedom, which are so boldly advocated for. In such circumstances, a conspicuous absence of explicit provision on marital rape further violates a married woman's rights and blocks her access to social justice and fundamental freedoms.

3.6 Islam and Marital Rape

Pakistan is an Islamic Republic, and it is only fitting that the legality and recognition of marital rape be analysed through the lens of Islam. Islam is a religion of peace and love, which promotes mutual understanding between spouses. The relationship of husband and wife is held in highest esteem in Islam as it eradicated the ills which existed in the pre-Islamic era. The Holy Quran has described this relation in the following words in Surah Ar-Rum, Verse 21;

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

And one of His signs is that He created for you spouses from among yourselves so that you may find comfort in them. And He has placed between you compassion and mercy. Surely in this are signs for people who reflect.

This verse of the Quran has beautifully described the purpose of the relationship between spouses, i.e. tranquility. The word “tranquility” is crucial in this entire scenario and requires thorough interpretation. The worthy Cambridge Dictionary has defined tranquility as ‘a peaceful, calm state without worry or violence’. Webster’s Dictionary has defined it as the quality or state of being tranquil (peaceful). Finding tranquility between spouses is hence synonymous with finding peace and calm in each other, a state which is free from violence, and is made the basis of the spousal relationship. In this background, those who defend marital rape completely overlook this aspect of Islam and remain adamant in asserting a man’s rights over a woman’s. The same verse also states that compassion and mercy have been placed between spouses, and where there is compassion and mercy, unequal power dynamics and non-compassionate behavior reducing women’s status go against the spirit of Islam.

In another verse, Surah Al-Baqarah, Verse 187, it is mentioned;

“They are clothing for you and you are clothing for them.”

Clothing is meant to cover one’s body and protect our bodies from dirt. There is infinite wisdom behind this verse as spouses are supposed to cover each other’s flaws, protect each other and keep each other safe. However, marital rape not only rips apart the relationship but also goes against the wisdom of this verse, as the sexual relations between husband and wife have the principle of reciprocity (Susila, 2013).

"And they (women) have rights similar to those (of men) over them in kindness, and men are a degree above them. Allah is Mighty, Wise"

(Quran 2:228)

Additionally, Islam has strictly ordered men to be kind to their wives. In the last sermon of the Prophet (S.A.W), he specially focused on kindness towards women and ordered men to take care of their women.

اسْتَوْصُوا بِالنِّسَاءِ خَيْرًا

‘You Should do Women Good’ (Ibn-Majah 1924)

In another Hadith, it is mentioned;

‘the best believers are those who are virtuous, and those who are the best are those who always do good to his wife’ (Abu Daud: 4682, Musnad Ahmad: 10106)”

The Hadith quoted above has infinite wisdom as doing good to one’s wife can include a wide range of things, from providing her food, clothing, shelter, to being kind to her and toward her, not hurting her in any way or form, and taking care of her needs. If Islam has provided men sexual rights over women, it has also put a duty on men to take good care of them. Where men are quick to assert their rights over women, they must be mindful of their duties as non-fulfilment of one’s duties can put him at disadvantage on the day of judgment. Scholars, such as Dr. Khalid Zaheer, reinforced this viewpoint by stating that any form of coercion in marriage violates the principles of justice (Adl) and kindness (Ihsan) that Islam upholds (Croffie, 2016).

Men in Islam are the maintainers, guardians, and protectors of women. Where Islam has given them a higher responsibility, they also have a heavier burden to fulfil the same.

Allah has mentioned in Surah Nisa, Verse 34;

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ

"Men (husbands) are protectors of women (wives), because Allah has made some of them (men) superior to some others (women), and because they (men) have provided maintenance from their wealth."

Al-Qawwam in this verse means leader and imposes a duty on men to educate their wives as per Islam, protect them and manage their affairs (Pitrotussaadah & Fadhilah, 2023). Men as protectors of women have been placed in a position of advantage and power, however how they use that advantage is completely up to them. As leaders and protectors of women, they are not only meant to protect women from other people but also protect them from themselves. Hence, Islam, as a religion of peace and love, cannot allow women to be manhandled and violated in the most brutal ways possible. Where women are the weaker gender, men must not take

advantage of them, as marriage is a relationship of trust and mutual respect. If a husband has rights over his wife, a wife also possesses certain rights over him, the least of which is to be considered a human being.

In Islamic law, the concept of rape is generally referred to as *al-zinā bi al-ikrāh* (الزنا بالإكراه), meaning adultery by coercion, or sometimes *ighṭiṣāb* (اغتصاب), derived from *ghaṣb* (غصب), meaning to take something without consent (Mutasir & Busyro, 2023). While classical jurists (fuqahā') did not develop a distinct category for marital rape, modern scholarship frames it as a violation of key Islamic legal principles, particularly *mu'āsharah bi al-ma'rūf* (معاشرة بالمعروف) – the Qur'anic command for spouses to live together in kindness.

3.6.1 Hadith and Interpretations

A well-known hadith states:

“If a husband invites his wife to his bed and she refuses, and he spends the night angry with her, the angels curse her until morning” (Ṣaḥīḥ al-Bukhārī, Ṣaḥīḥ Muslim).”

This tradition has been interpreted in different ways. Some see it as emphasizing a wife's duty to respond to her husband's conjugal rights. Others, however, argue it cannot be applied rigidly, especially when a wife's refusal stems from legitimate causes such as illness, exhaustion, or neglect of her rights. Applying it without nuance risks injustice, contradicting Islam's ethos of compassion and balance.

3.6.2 Prohibitions Relevant to Marital Rape

Islam explicitly prohibits certain sexual practices, even within marriage:

1. Intercourse during menstruation or post-partum bleeding.
2. Anal intercourse.
3. Intercourse during obligatory fasting hours.
4. Sadistic or harmful sexual acts.

Any forced sexual act that causes physical harm, psychological trauma, or violates these restrictions may fall under *jarīmah* (criminal acts) requiring *diyah* (compensatory damages) if injury occurs.

3.6.3 Maqāṣid al-Sharī'ah Framework

Through the lens of **maqāṣid al-sharī'ah** (مقاصد الشريعة), marital rape contradicts the higher objectives of Islamic law, which seek to preserve:

1. **al-Dīn** (religion) – coercion harms spiritual well-being.
2. **al-Nafs** (life/soul) – violence violates the sanctity of life.
3. **al-'Aql** (reason) – trauma undermines mental health.
4. **al-Nasl** (lineage) – forced relations may harm reproductive rights and family harmony.

al-Māl (property/rights) – neglect or coercion undermines a wife's entitlement to financial and emotional security

3.6.4 Mu'āsharah bi al-Ma'rūf

The Qur'an instructs spouses to live with one another *bi al-ma'rūf* (in kindness and fairness). This principle requires mutual respect, compassion, and consideration of the other's physical and emotional state. A husband forcing himself upon his wife directly violates this principle.

3.7 Cross-Jurisdictional Analysis and International Standards

In South Asia, India and Bangladesh retain marital-rape exemptions, while Sri Lanka and the Maldives only recognize it in narrow circumstances. Pakistan still lacks explicit criminalization, despite repeated calls from international bodies. By contrast, Nepal has adopted a relationship-blind definition of rape, and Indonesia's 2022 Law on Sexual Violence recognizes spousal rape directly. Beyond the region, Turkey and Tunisia have abolished marital exemptions altogether, whereas Afghanistan has rolled back protections under the Taliban. Malaysia's provision penalizes coercion by husbands but falls short of consent-based standards.

International human rights law reinforces the case for reform. The UDHR affirms dignity, equality, and free consent to marriage (Articles 1, 3, 5, 16). The ICCPR requires equal protection (Articles 2–3), prohibits cruel treatment (Article 7), and guarantees equality of spouses (Article 23). CEDAW obliges states to eliminate discrimination (Articles 1–2), address stereotypes (Article 5), and ensure marriage equality (Article 16). Its General Recommendations 19 and 35 expressly classify marital rape as a human-rights violation requiring criminalization and due diligence. The 1993 DEVAW similarly identifies marital rape as violence against women (Article 2[b]) and urges states to act with due diligence (Article 4). Complementing these instruments, the UN Handbook for Legislation on Violence against Women advises that rape laws must be consent-based, relationship-neutral, and free of discriminatory evidentiary rules.

Melanie Randall and Vasanthi Venkatesh emphasize that under human rights law, states are not merely permitted but are obliged to criminalize sexual violence in intimate relationships, including within marriage (2015). They argue that the principle of due diligence, articulated in CEDAW and reinforced by the jurisprudence of bodies such as the European Court of Human Rights and the Inter-American Court of Human Rights, requires states to adopt effective laws, investigative mechanisms, and enforcement strategies. In their view, criminalizing marital rape is essential to fulfilling the state's duty to protect women from discrimination and violence.

Barbara Stark argues that international law imposes a clear obligation on states to criminalize marital rape through the combined force of treaties, customary norms, and the jurisprudence of international tribunals (2015). She points to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the UN Declaration on the Elimination of Violence Against Women (DEVAW) as anchoring principles, which compel states to dismantle the marital rape exemption and treat sexual violence within marriage on equal footing with other forms of rape.

3.8 Policy Lessons For Pakistan Drawn from The Comparators Tand Standards

1. **Remove any marital exemption and make consent the organizing principle.** Turkey and Tunisia demonstrate that abrogating spousal immunity and applying a relationship-blind definition of rape is both doctrinally coherent and practically administrable. This approach is demanded by CEDAW GR 35 and consistent with UDHR and ICCPR protections.
2. **Codify an offence that expressly covers forced sex in marriage.** Indonesia's 2022 reform shows how to legislate a general offence of sexual violence that unambiguously includes marital contexts. Malaysia's narrower coercion-based clause illustrates why partial measures are inadequate.
3. **Avoid conditional or fragmented recognition.** The Maldives' limited, circumstance-specific model leaves survivors unprotected outside enumerated situations; Sri Lanka's judicial-separation test is similarly under-inclusive. A general consent standard avoids these gaps.
4. **Align with treaty obligations and UN guidance.** CEDAW Articles 1–2 and GR 35, read with ICCPR Article 7, require effective criminalization, survivor-centered procedures, and removal of discriminatory evidentiary rules. Domestic law that withholds equal protection in marriage risks non-compliance.

Ground reforms in data and global benchmarks. With only 77 countries explicitly criminalizing marital rape, Pakistan's reform would place it on the side of the prevailing human-rights consensus and strengthen periodic reporting under CEDAW

3.9 Challenges Posed to Explicit Criminalization of Marital Rape in Pakistan

The primary challenge to explicitly criminalizing marital rape in Pakistan is the persistence of the "implied consent" paradigm. Courts and police continue to treat marriage as a blanket authorization for sexual access, despite the 2006 Protection of Women Act removing the "not his wife" clause (Khan, 2020). This doctrinal hesitation is reinforced by patriarchal social norms that frame spousal sexual violence as a private matter, leaving victims without institutional or social support (Saleem, 2021). The absence of prosecutions underscores how statutory silence and entrenched attitudes converge to deny women equal protection under the law.

Another structural barrier lies in institutional weakness. Rape conviction rates in Pakistan remain below 3%, with survivors facing hostile police reception, compromised medical examinations, and inadequate evidence collection (Croffie, 2016). Even if marital rape were explicitly criminalized, these systemic flaws would discourage reporting and reduce the likelihood of successful prosecution. Political resistance compounds the problem, as previous debates over family and sexual laws, such as the Hudood reforms, triggered backlash from religious and conservative groups, deterring legislators from advancing sensitive reforms (Mehdi, 2006).

Given these challenges, victim-protection mechanisms must be built into any reform package. A statutory witness-protection program is essential to reduce the risk of retaliation and intimidation; the UNODC has already developed a policy model for Khyber Pakhtunkhwa that could be scaled nationally (UNODC, 2019). Confidential and in-camera proceedings are equally critical, shielding survivors from stigmatization and secondary victimization. Without these measures, even a progressive statute risks being hollow.

Access to survivor-centered services is another key gap. Punjab's Violence Against Women Centre demonstrated that one-stop facilities, combining FIR registration, forensic services, counselling, legal aid, and safe housing, can significantly reduce attrition (Punjab Commission on the Status of Women, 2018). Scaling up such centers nationwide would directly counter the reporting and evidence-gathering challenges that currently undermine rape prosecutions. Expansion of shelters and emergency accommodation is also necessary to enable women to leave abusive marital homes safely, particularly where family or community structures pressure them into silence (Saleem, 2021).

Finally, criminalization must be paired with systemic reform in policing and medico-legal practices. Specialized GBV units trained in survivor-centered interviewing, standardized forensic protocols, and legal aid services would help bridge the gap between law and enforcement. In this sense, explicit criminalization is the first step, but without parallel investment in victim-protection infrastructure, Pakistan risks replicating the failures of other partially reformed contexts where laws exist on paper but are unenforced. Only a combined strategy, law plus protection can bring Pakistan into compliance with its obligations under CEDAW, ICCPR, and UDHR

3. CONCLUSION

The increasing discourse of marital rape has revealed the gruesome realities of women in marital relationships. While Pakistani society has accepted and recognized this as a crime and violation of a woman's fundamental rights, what is still missing in the law is an explicit provision of marital rape. Bringing cases of marital rape within sodomy is an interim measure, but the same does not accord the same level of punishment to the perpetrators as they deserve. Given the amount of physical, mental, and psychological trauma suffered by the victims of marital rape all over the world, it is only fair that an explicit provision, which expressly criminalizes marital rape be enacted. Through section 375 of the PPC has enough room to cover cases of marital rape as no bar has been placed within the provision, however explicit criminalization would act as a deterrent and have the effect of discouraging such behavior against married women.

The more progressive sector of society and people who are aware of their rights may understand the implication of marital rape; however, the regressive portion of the society still remains at a disadvantage due to a lack of awareness and education. Stranger rape is recognized by all classes, educated or not; however, the rural women in Pakistan and women who do not have access to modern resources have not the slightest idea that marital rape exists. Such women still consider that once married, they can only leave their husband's house when they are dead (a practice which is still common in Pakistan). This leads women to give in to every demand of their husbands, whether right or wrong, in terms of sexual relations. But an express provision which explicitly mentions that having intercourse with one's wife without her consent is a criminal offence having penal consequences, would certainly lead to less coercive behavior on the part of men.

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