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# **REVISITING MARITAL RAPE LAWS IN INDIA: A SOCIO-LEGAL AND DOCTRINAL IMPERATIVE**

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## **Abstract**

This paper critically examines the legal non-recognition of marital rape in India and its implications within the broader constitutional and socio-legal framework. It explores the *historical inertia surrounding Exception 2 to Section 375 of the Indian Penal Code, juxtaposes it with comparative legal systems, and advocates for its repeal using rare doctrinal tools and jurisprudential references. Employing ancient legal constructs like *condictio indebiti* and *jus mariti*, the paper traces the socio-historical entrenchment of patriarchal privilege in matrimonial law. Further, it incorporates insights from canonical legal thinkers such as Roscoe Pound, Catharine MacKinnon, and John Stuart Mill to argue for a reimagination of spousal autonomy in contemporary India.*

## **I. Introduction**

The doctrine of coverture, an archaic legal construct from English common law, once held that a married woman's legal identity was absorbed into that of her husband. Although formally abolished, its vestiges remain embedded in India's Exception 2 to Section 375 IPC, which immunizes a husband from prosecution for raping his wife. This paper contends that this immunization is both anachronistic and antithetical to India's constitutional ethos.

## **II. Historical and Doctrinal Context**

1. Doctrine of Jus Mariti and the Common Law Tradition Derived from Roman-Dutch jurisprudence, *jus mariti* (right of the husband) empowered men to exercise proprietary and bodily control over their wives. As Blackstone wrote in *Commentaries on the Laws of England*, the very act of marriage implied irrevocable consent to conjugal relations. Such constructs pervaded colonial legal systems, including India's.

2. Persistence of Exception 2 and Legal Formalism Despite postcolonial legal reforms, Exception 2 has endured, exemplifying what Roscoe Pound termed “mechanical jurisprudence”—a form of law that clings to precedents despite evolving social norms.
3. Constitutional Incompatibility The exception violates Articles 14 (equality), 19(1)(a) (freedom of expression), and 21 (right to life and dignity). Justice D.Y. Chandrachud in *Navej Singh Johar v. Union of India* emphasized the constitutional value of "transformative constitutionalism," which demands the law evolve to reflect the lived realities of the marginalized.

### **III. Socio-Legal Dimensions and Theoretical Analysis**

1. Construct of Implied Consent and Legal Fiction The presumption of perpetual consent within marriage is a legal fiction that is untenable in modern society. Drawing on Catharine MacKinnon’s feminist jurisprudence, the marital rape exception reflects institutionalized subordination, whereby the state sanctions male sexual entitlement.
2. Social Stratification and Intersectionality Marital rape disproportionately affects women from socio-economically disadvantaged backgrounds who lack access to legal redress. Kimberlé Crenshaw’s theory of intersectionality underscores how overlapping identities compound the vulnerability of such victims.
3. Revisiting *Condictio Indebiti* in the Indian Context Although originally a Roman law principle concerning undue enrichment, *condictio indebiti* may be repurposed metaphorically to question the continued legal benefit (immunity) the marital rape exception confers upon husbands, despite a lack of legitimate legal justification in modern democratic society.

### **IV. Comparative Jurisprudence**

1. Global Legal Trends Over 100 countries have criminalized marital rape, including the UK (through the *R v. R* case, 1991) and South Africa. India remains among a minority of states clinging to this legal relic.
2. The *R v. R* Case and Its Relevance The UK House of Lords, in *R v. R*, held that the marital rape exemption was a “common law fiction” that had become “anachronistic and offensive.” This judgment is a persuasive precedent for India’s courts to emulate.

## V. Judicial Hesitance and Legislative Stagnation

Despite several PILs, including those in *Independent Thought v. Union of India*, the judiciary has tread cautiously. The Law Commission's 172nd Report (2000) recommended the deletion of Exception 2, but legislative inertia persists due to socio-political sensitivities.

## VI. Recommendations and the Way Forward

### 1. Legislative Amendment

A clear and unequivocal repeal of Exception 2 is necessary. Drafting a gender-neutral and consent-based definition of rape is imperative.

### 2. Judicial Activism and Constitutional Interpretation

The Supreme Court must adopt a purposive approach in interpreting Article 21 to include sexual autonomy within marriage.

### 3. Public Legal Education and Advocacy

Awareness campaigns must be intensified to dismantle the cultural taboo surrounding marital rape.

## VII. Conclusion

The marital rape exception is a colonial vestige incompatible with the principles of justice, liberty, and dignity. By invoking ancient legal principles like *jus mariti* and *condictio indebiti* and combining them with modern constitutionalism and feminist jurisprudence, this paper makes a unique and urgent case for reform. The Indian legal system must rise from the quagmire of archaic doctrines and embrace a future where marital rape is unequivocally recognized and condemned.

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