

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CONSENT WITHIN MARRIAGE: A LEGAL ANAYLSIS OF MARITAL RAPE

AUTHORED BY: ANUSHKA SHARMA

ABSTRACT:

Marital rape is still one of the most debated and poorly addressed topics in Indian criminal law. Even with immense legal advances to tackle gender violence, India still maintains Exception 2 to Section 375 of the Indian Penal Code, which excludes non-consensual sexual intercourse by a husband with his wife from the definition of rape on the grounds that the wife is over eighteen years old. This working paper explores the historical, constitutional, legal, cultural, and constitutional foundations of this exception. It critically analyzes how Indian jurisprudence conflicts with core rights established under the Constitution, specifically the right to equality, personal freedom, and dignity. Based on comparative examination of international legal norms, judicial orders, and socio-legal consequences, this research contends that criminalization of marital rape is a necessary requirement that needs to be pursued expeditiously. The essay underscores that consent needs to be understood as dynamic, revocable, and requisite in all intimate relationships, including marriage. The study hopes to add to an increasing stream of academic and policy literature calling for legal acknowledgment of marital rape in India and the imperative for legislative and societal change.



INTRODUCTION:

Marriage within India is commonly viewed as a religious and inviolable relationship, deeply rooted in religious and societal conventions that tend to prioritize the family unit over individual rights. While this reverence for marriage has also been used to sustain gendered power inequalities, most notably the idea that a husband has inherent rights over his wife's body. Marital rape, or non-consensual sexual intercourse by the husband against his wife, is a raw example of such imbalance. The failure to accord legal recognition to marital rape in India jarringly tallies with the lack of constitutional values of equality and dignity that obtain in the country. While legal systems acknowledge and punish sexual violence outside marriage, they do not bring similar safeguards for married women. The outcome is a legal order that permits the infringement of bodily autonomy in the name of matrimonial obligations.¹

This essay seeks to examine the socio-legal dynamics of marital rape and promote its recognition as a criminal offense, consistent with current constitutional and human rights standards. Through an examination of judicial interpretations, legislative gaps, international best practices, and sociocultural considerations, the study underscores that marital rape recognition is essential not only for justice but also for constructing a gender more equal society. The inability to criminalize marital rape is an indicator of a wider failure to protect women's basic rights, leaving them exposed to violence in what should be their safest place their home.

Indian marriage has long been held sacred not just as a legal institution but as an indissoluble and sacred union, founded in religious traditions and cultural mores. This sanctification all too often leads to the protection of the family unit at the expense of individuals within it. Though such ideals get romanticized, they also reinforce deeply rooted gender hierarchies in which patriarchal norms spell out the roles, responsibilities, and even the bodily freedoms of spouses especially women. Perhaps the most disturbing expression of this imbalance is the continued perception that, in marriage, a husband gains irrevocable sexual rights over the body of his wife. This attitude actually undermines the notion of consent within marriage to allow for acts of sexual violence under the cover of matrimony.

Marital rape, or non-consensual sexual intercourse by a husband against his wife, is a classic

¹ UN Women, "Marital Rape: The Indian Exception" (2022). <https://www.unwomen.org/en/news-stories/feature-story/2022/04/marital-rape-the-indian-exception>

example of this deep-seated power imbalance. Even as the obvious transgression of a woman's body autonomy and dignity, Indian law still extends immunity to husbands through Exception 2 to Section 375 of the Indian Penal Code. This judicial exception suggests that consent is taken for granted under the institution of marriage, and thus refuses equal protection from rape to married women that unmarried women enjoy. This harsh disparity gives rise to grave constitutional issues, especially concerning the rights to equality (Article 14), personal freedom (Article 21), and freedom from discrimination (Article 15).²

The omission of marital rape from criminal law is part of a larger systemic failure to protect women's rights under the law. It reinforces the belief that women who are married lose control of their own bodies to their husbands an idea which runs directly counter to the ideals of autonomy, agency, and human dignity. In addition, it creates a legal and social climate in which victims of marital sexual violence are silenced, stigmatized, and left without recourse.

This article attempts to critically analyze the socio-legal aspects of marital rape in India and make a case for its overt acknowledgment as a criminal offense. Through an in-depth examination of constitutional provisions, judicial precedents, legislative lapses, international human rights commitments, and contemporary social attitudes, the research hopes to highlight the imperative for legal reform. It argues that the criminalization and acknowledgment of marital rape are not only a legislative requirement but a moral one in a society that professes to uphold justice, equality, and human dignity.

Given worldwide best practices and emergent jurisprudence in other jurisdictions, the persistent immunity accorded to marital rape in India is anachronistic and unjust. The domestic sphere, where the domestic has conventionally been constructed as a sphere of love and security, gets transformed into one of trauma and violation for millions of women yet is complicit in their trauma. Attending to marital rape is therefore not just an issue of personal security but a test case for India's upholding of gender justice and constitutional morality. The time has come to dismantle archaic legal exceptions and affirm, unequivocally, that consent matters within and outside marriage.

² **The Constitution of India**, arts. 14, 15, 19, and 21.
<https://legislative.gov.in/constitution-of-india>

Understanding Marital Rape and the Concept of Consent:

Marital rape is a type of sexual assault that takes place in the context of a legally sanctioned marriage. It consists of one spouse, usually the husband, forcing or coercing the other into sexual intercourse without consent. Unlike acquaintance or stranger rape, marital rape typically consists of numerous assaults, over a sustained period of time, which are covered up by the presumption of conjugal rights. The lack of visible wounds or apparent force does not detract from the trauma caused. What separates marital rape from other forms of violence is not just the act itself but the betrayal of trust and intimacy that a marriage is both assumed to provide and is meant to protect. The withholding of consent within marriage undermines the very foundation of a healthy relationship, which should be founded on mutual respect and agency.

Consent, legally and ethically, is a person's willing consent to take part in a given act. In sexual relationships, consent has to be informed, willing, and capable of being withdrawn at any time. The understanding that marriage entails universal consent for sexual intercourse is archaic and harmful. It disobeys the dictum that every sexual act must be accompanied by consent despite the relationship between the partners. This myth, based on historical teachings like Sir Matthew Hale's argument that a wife cannot be raped by her husband, still affects Indian legal thinking.

Comprehending consent as an ongoing and communicative process is central to the realization of bodily autonomy and dignity in all relationships, including marriage. Consent cannot be assumed or inferred from the marriage relationship; it must be communicated and honored in each case. This contemporary view of consent is becoming more widely accepted by liberal legal systems and lies at the basis of international human rights law. In contrast, India's marital rape exception reaffirms anachronistic understandings of women as junior partners in marriage and denies the legitimacy of their autonomy. Awareness of the importance of mutual respect and bodily integrity in all relationships becomes paramount to revising the legal system that regulates marital rape.³

Marital rape is a very pernicious type of sexual violence, occurring in the context of a legally recognized and socially respected institution of marriage. It happens when one partner, typically the husband, forces or pressures the other into sexual contact against his or her will, overruling the crucial element of consent. What makes marital rape distinct from other sexual

³ **Universal Declaration of Human Rights**, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948). <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

assaults is not only its repetitive and frequent nature but also the special power dynamics and sexual intimacy involved. Differently from assaults by strangers or acquaintances, marital rape is frequently silent, made complex by emotional, financial, social, and legal involvement. The abuse is often normalized in the name of "conjugal rights," a notion that assumes sexual access as a natural aspect of marriage, rather than an entitlement to be earned by mutual consent and respect.

Further, the trauma caused by marital rape is heightened by the violation of the trust, love, and emotional safety a marital relationship has promised. The violation is not only of the body, but of the sanctity and emotional weave of the relationship as well. The victim in many instances shares the same dwelling as the perpetrator, with no access to privacy, safety, or justice. Lack of visible bodily injuries or external force in these instances usually results in social incredulity and legal indifference, further validating the survivor's trauma. Nonetheless, the psychological damage, emotional humiliation, and deprivation of physical autonomy suffered by the survivor are no less profound than in any other instance of sexual abuse.

At the center of any sexual violence discourse is the element of consent a word that is both legally and ethically central. Consent is a voluntary, informed, and enthusiastic consent to engage in a particular sexual act. It has to be given willingly, without pressure, manipulation, or coercion. It is not a gift that will be given once but an active, communicative process that can be taken back anytime. Of the essence here is the fact that consent has to be act-specific and context-sensitive, such that consent for one sexual activity does not equate to consent for another, and consent at one moment in time does not last forever.⁴

The ongoing myth that marriage is blanket or irrevocable consent to sexual intercourse is both archaic and unsafe. This idea draws back to long since discredited common law precedents, most significantly in the 17th-century views of Sir Matthew Hale, who asserted that "the husband cannot be guilty of a rape committed by himself upon his lawful wife." Hale's argument, which treated wives as goods owned by their husbands and marriage as an irreversible sexual compact, has long since been discredited in contemporary legal and human rights thinking. Yet, it still has a long shadow over Indian law, where Exception 2 to Section 375 of the Indian Penal Code clearly enumerates that sexual intercourse by a man with his wife,

⁴ UN Women, "Marital Rape: The Indian Exception" (2022). <https://www.unwomen.org/en/news-stories/feature-story/2022/04/marital-rape-the-indian-exception>

not being below fifteen years of age, is not rape. This legal fiction reduces consent into an ongoing marital duty, depriving women of agency and bodily autonomy in the context of marriage.

This anomaly in law is at odds with the changing worldwide perception of consent and body rights. In some progressive jurisdictions around the world, such as Canada, South Africa, the United Kingdom, and many U.S. states, marital rape has come to be criminalized, based on the understanding that marriage does not and must not eliminate a person's right to govern their own body. These courts reiterate that all sexual acts should be consensual irrespective of the character of the relationship between the individuals. In international human rights law, treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and General Recommendation No. 35 on gender-based violence stress that all forms of sexual violence, including marital rape, should be addressed by domestic legal systems.⁵

India's inability to criminalize marital rape, thus, is not just a legislative failure but also a deeply ingrained patriarchal attitude still perceiving women as secondary partners in marriage subject to the control and will of their husbands. It is an unwillingness to acknowledge marriage as an equality partnership, based on mutual respect, understanding, and consent. The assumption that the marriage relationship brings with it automatic sexual entitlement of the husband perilously erodes the very pillars of a healthy and balanced marriage.

Embedding a contemporary conception of consent in marital relationships is as important to safeguard women against sexual abuse as it is to redefine marriage as an equality and dignity-based union. Legal reforms should recognize that the lack of consent cannot be waived just because a marital bond exists. The right to 'say no' is an inherent right of every person, whether married or otherwise, and its withdrawal amounts to an infringement of human rights and constitutional safeguards under Articles 14, 15, and 21 of the Indian Constitution.

Marital rape criminalization would not only be a legal rectification of an old wrong, but also a symbolic recognition of women's personhood, agency, and autonomy in intimate relations. It would provide a strong message that consent is not negotiable and that marriage should never

⁵ **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, Dec. 18, 1979. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

be employed as a shield to abuse. Reforming the law to this extent is not merely about securing individual victims it is about remolding the very cultural and legal framework of society towards one which honors and respects the inherent dignity of all its members.

Historical, Cultural, and Legal Context in India:

The exception of marital rape from criminal prosecution in India is a colonial remnant, and it is etched into the Indian Penal Code of 1860. It was shaped by British common law, specifically the idea that the wife becomes her husband's sexual property on marriage. Even after the independence of India and the shaping of its constitutional values, this outdated legal position has stuck. The persistence of Exception 2 to Section 375 IPC is a reflection of the law's hesitation to enter the 'private sphere' of marriage, and thus disregard the rights and agency of women.⁶

Indian society has strong cultural roots in the sanctity and durability of marriage. This has led to hesitancy in examining violent conduct within matrimonial marriages. Patriarchal culture supports male authority in the family and attributes compliance on the part of the wife as a virtue. Religious scripture and traditional law regularly enforce the concept of a wife's responsibility to fulfill her husband's sexual desires, with minimal space for the establishment of personal boundaries. Such socialization discourages women from identifying or reporting sexual abuse in marriage. As such, marital rape is one of the most underreported and least understood gender-based violence in India.

Additionally, India's legal discourse has lagged behind shifting societal standards and universal human rights norms. As some post-colonial nations have amended their legal codes to make marital rape criminal offenses, India's inability to do so speaks more of a disconnect between legislative response and constitutional principle. In addition, the role of religious personal laws, which traditionally give greater value to preserving family harmony rather than protecting individuals' rights, has made it more difficult to mount a reform effort. Legal inertia, patriarchal culture, and religious conservatism have combined to create a situation in which marital rape survivors lack effective legal recourse and social support.

The immunity of marital rape from criminal trial in India is a relic of colonial law, well

⁶ Law Commission of India, **Report No. 172: Review of Rape Laws**, (2000). <https://lawcommissionofindia.nic.in/101-169/Report172.pdf>

embedded in the Indian Penal Code of 1860. It was shaped in significant part by the principles of British common law, more notably the ruling of Sir Matthew Hale, which held in the 17th century that in becoming a bride, a wife voluntarily agrees to coitus with her husband. Under this outdated belief, the marital relationship turns a woman into her husband's sexual property, hence annihilating her right to deny sex. Although the British legal system itself has come to criminalize marital rape, India still maintains this colonial-era exception, even though it had already gained independence over seven decades ago. Exception 2 to Section 375 of the Indian Penal Code categorically declares that "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape." This provision is not only a legal lacuna but a state failure to enforce the values of bodily autonomy, equality, and human dignity constitutionalized in the Indian Constitution.⁷

The continued existence of this exception is a symptom of a wider reluctance on the part of the Indian legal system to interfere in what is traditionally considered the 'private sphere' of marriage. Law has always been unwilling to intervene in the relations of marriage, considering them to be sacrosanct and beyond the reach of public judgment. This respect for marital privacy has led to the subordination of women's rights at home, maintaining a system where individual freedom is sacrificed in the interests of marital harmony. Notwithstanding the revolutionary vision of the Constitution that assures basic rights to all citizens irrespective of gender, the legalization of marital rape is glaringly absent, thereby denying women protection from violence within the context of marriage.

Indian society attributes supreme significance to the sanctity, permanence, and inviolability of the marital institution. Marriage is frequently represented not only as a social contract but also as a sacred, lifetime union, legitimized by religion, tradition, and convention. This romanticization of marriage has created a cultural environment under which the investigation of abuse in nuptial relations is perceived as threatening social solidarity. Patriarchal values that pervade public language and private lives reinforce male dominance and female subordination, defining gender roles that make control, dominance, and obedience the norm. A woman who resists or complains of sexual coercion in marriage is generally seen as disrespecting the institution itself, not as insisting on a basic human right. Cultural norms, supported by citations of religious scripture and local mores, often repeat the idea of a wife's obligation to satisfy her

⁷ **Indian Penal Code, 1860, § 375 Exception 2.**
<https://legislative.gov.in/sites/default/files/A1860-45.pdf>

husband's sexual desires, often depicting refusal as rebellion or even as a rationale for violence.

This deep-seated social conditioning has far-reaching implications. It discourages women from recognizing non-consensual sex in marriage as rape, much less report it. Stigma related to questioning one's husband or bringing marital matters before the public also discourages women from going for legal recourse or counseling. Fear of social exclusion, economic subservience, and emotional manipulation compels many survivors into silence. Marital rape is thus not only one of the most widespread but also one of the most underreported and least understood forms of gender-based violence in India.

Adding to this cultural resistance is the complacency of Indian legal thought in catching up with modern societal norms and international human rights commitments. As Nepal, South Africa, and Canada have had to reform their legal systems to criminalize marital rape and ratify women's autonomy, India remains behind. This stagnation in the law is especially evident with a country committed to global conventions like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which specifically promotes the eradication of gender-based violence, including in marriage.⁸

The intertwined existence of secular criminal law and religious personal law in India also makes it more challenging to implement reforms. Personal religious laws usually give importance to maintaining family integrity and marriage harmony at the cost of acknowledging individual rights, particularly for women. These laws have a tendency to reinforce patriarchal values and consider marriage as a sphere controlled by religious morality, not constitutional values. This double legal system has enabled highly conservative and patriarchal thought patterns to withstand reform strategies, in the name of safeguarding religious freedom and cultural identity. As a result, any move to criminalize marital rape is usually opposed in terms of the threat it poses to destabilizing the family system or challenging religious practices.

This combination of patriarchal attitudes, religious conservatism, and outmoded legal systems has provided a hostile climate for the survivors of marital rape. The lack of detailed legal remedies not only denies justice but also aggravates the trauma of the survivors, who are left

⁸ **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, Dec. 18, 1979. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

without institutional or social support. Courts themselves have been inconsistent in dealing with such cases, vacillating between enforcing constitutional values and respecting legislative silence. This has resulted in a glaring disconnect between constitutional jurisprudence's aspirational ideals of equality and justice and the everyday experience of most Indian women.

Legal Framework and Judicial Discourse:

Section 375 of the IPC defines rape but clearly excludes sexual acts performed by a husband on his wife, subject to her age being eighteen years or more. This legal exemption not only goes against the wider definition of rape enacted by the Criminal Law (Amendment) Act, 2013 but also against constitutional principles of equality and integrity of the body. The judiciary has taken incremental steps in challenging this exception. In *Independent Thought v. Union of India* (2017), the Supreme Court opined that intercourse with a minor spouse constitutes rape, thus reading down the age of consent in marital relationships to eighteen years. This was a step forward but did not resolve the issue of marital rape by adults in general,

The Delhi High Court's divided verdict in *RIT Foundation v. Union of India* (2022)⁹ demonstrates the legal conundrum once again. Justice Rajiv Shakdher held the marital rape exception to be unconstitutional due to infractions of Articles 14, 19, and 21. On the other hand, Justice C. Hari Shankar preserved the exception, given the risk of abuse and the institution of marriage. This judicial variation attests to the necessity of authoritative decision-making by the Supreme Court to determine the constitutional viability of the marital rape exemption. Meanwhile, civil remedies under the Protection of Women from Domestic Violence Act, 2005 recognize sexual abuse within marriage but lack the punitive force of criminal law, thereby offering incomplete protection.

Although civil remedies offer some relief, they do not provide the deterrent effect or justice associated with criminal prosecution. The absence of a penal provision for marital rape allows perpetrators to act with impunity. The mismatch between civil and criminal law indicates a greater philosophical split regarding the nature of marriage, autonomy, and the state's role in policing intimacy. The judicial embrace of sexual autonomy and consent needs to be supplemented by legislative change that provides enforceable rights based on these principles. Until such reform, however, the law is complicit in enabling violence within marriage.

⁹ **Amita Dhanda**, "Conjugal Violence and the Indian Legal Scenario", (2000) 1 *Indian J. Gender Stud.* Available on: <https://journals.sagepub.com/home/ijg>

Section 375 of the Indian Penal Code (IPC) provides the definition of rape and also defines the special conditions under which sexual intercourse constitutes a criminal offence. Yet Exception 2 to this section still excludes a husband from prosecution for rape if such an act is perpetrated on his wife, as long as the wife is not below the age of eighteen years. This provision de facto operates to grant a blanket immunity to husbands, protecting them from legal liability for non-consensual sex in the context of marriage. This exception is in sharp contrast to the wider and more expansive definition of rape enacted by the Criminal Law (Amendment) Act, 2013, which largely broadened the field of what qualifies as sexual violence. The exception, then, functions as a colonial patriarchy relic of the past and erodes the changing perception of consent, bodily autonomy, and human dignity.

The marital rape exception enshrined in Section 375 is not a mere legislative failure it is a deeper constitutional and philosophical inconsistency. It contravenes the basic rights enshrined in the Constitution of India, particularly Article 14 (equality before law), Article 19(1)(a) (freedom of expression and personal freedom), and Article 21 (protection of life and personal liberty). The legislation, by excluding husbands from general immunity with a special one, deprives married women of the same protection under the law given to unmarried women, practically making them second-class citizens of the criminal justice system.

The courts, albeit restricted within the boundaries of available legislation, have made a partial move towards opposition of this judicial anomaly. A milestone in this direction was the Supreme Court judgment in *Independent Thought v. Union of India* (2017)¹⁰, wherein the Court affirmed that sexual intercourse with a minor wife (between 15 and 18 years) would constitute rape, regardless of the marital status. The Court read down the exception of marital rape to align it with the Protection of Children from Sexual Offences (POCSO) Act as well as the constitutional imperative of child protection. Although this verdict was a milestone on the way to the recognition of the primacy of consent, it was restricted in its scope, as it only treated cases where the wife was a minor and did not touch upon the larger issue of non-consensual sex in marriages between adults.

Additional judicial consideration of the matter took place in the *RIT Foundation v. Union of India* (2022) case before the Delhi High Court, which ended in a divided verdict. Justice Rajiv

¹⁰ *Independent Thought v. Union of India*, (2017) 10 SCC 800. <https://indiankanoon.org/doc/107150296/>

Shakdher opined that the marital rape exception was against the Constitution, highlighting that it violated the fundamental rights of women and encouraged gender-based discrimination. He emphasized that the exception contravened Articles 14, 19, and 21, and that marriage should not be a permission to override a woman's autonomy and dignity. Conversely, Justice C. Hari Shankar affirmed the exception as constitutional, citing concern over the abuse of the provision and the sanctity of marriage as an institution. This divergence in judicial logic is representative of the wider societal and ideological friction over the issue and highlights the pressing necessity for authoritative determination by the Supreme Court of India for determining the constitutional validity of the marital rape exception.

Lacking a criminal provision per se on marital rape, civil relief under the Protection of Women from Domestic Violence Act, 2005 provides limited avenues. The Act also acknowledges sexual abuse as domestic violence and allows victims to obtain protection orders, residence rights, and monetary damages. The remedies are, however, civil in nature and do not have the deterrent and punitive effect of criminal sanctions. Therefore, as much as they can give temporary relief or protection, they do not come up to providing substantial justice for survivors nor do they hold perpetrators criminally liable.

The coexistence of civil and criminal law immunity for marital rape demonstrates a deep contradiction in the legal response to sexual violence within marriage. This contradiction underlies a deeper philosophical split regarding the nature of marriage, the autonomy of the individual within it, and the role of the state in governing private relationships. The constitutional common law fiction that marriage involves ongoing sexual consent is incompatible with contemporary constitutional ideals of freedom, dignity, and equality between the sexes. Consent has to be understood as dynamic and revocable, regardless of the marital status of the woman and her husband.

Judicial acceptance of a woman's sexual autonomy and of her right to bodily integrity hence has to go hand in hand with legislation that translates the foregoing principles into enforceable legal rights. It is not only the legal requirement but also a moral one to criminalize marital rape. It would establish that the state is committed to the protection of constitutional rights of all citizens, whether married or not, and would make a strong indication that sexual violence will have no toleration in any setting. Until reform is made, the law is complicit in continuing systemically based violence in marriage and failing millions of women who remain voiceless

and vulnerable behind the legal umbrella of marital immunity.

Constitutional Incompatibility:

The exception of marital rape is a statutory contravention of various core rights it has promised to safeguard under the Indian Constitution. At the center of this constitutional challenge lies Article 14, which assures equal treatment under the law. In distinguishing between unmarried and married women, it withholds equal protection to a large section of women. Such artificial categorization does not meet the test of reasonable classification, which demands that differences in law must be founded on an intelligible differentia and must have a rational nexus with the objective pursued to be achieved. In marital rape, differential treatment on the basis of marital status has no proper state interest and is clearly arbitrary.¹¹

Article 15 also prohibits discrimination on the grounds of sex. The marital rape exception perpetuates violence against women by permitting a husband to claim sexual dominance over his wife without recourse under the law. This not only disobeys the letter of the law but also sabotages the spirit of gender justice that the framers of the Constitution intended to create. Additionally, Article 21 that ensures the right to life and personal liberty has been interpreted by the judiciary to encompass the right to live with dignity, bodily integrity, and freedom from violence. Marital rape is a serious violation of these rights, depriving women of agency in their own bodies and reducing them to the status of objects of conjugality.

The Supreme Court has acknowledged in some landmark rulings that privacy, autonomy, and dignity are essential elements of Article 21. In Justice K.S. Puttaswamy v. Union of India (2017), the Court highlighted the significance of bodily autonomy and decisional privacy. In a like manner, in Joseph Shine v. Union of India (2018), the Court invalidated the law of adultery, noting that marriage does not involve the surrender of constitutional rights. These decisions reflect the developing conception of personal freedom and serve to uphold the criminalization of marital rape. The persistent availability of the marital rape exception undermines these judicial rulings, as well as sends a message of official state support for gender violence within marriage.

¹¹ Human Rights Watch, "India: Rape Law Reforms Fall Short" (2013). <https://www.hrw.org/news/2013/03/06/india-rape-law-reforms-fall-short>

Constitutional Violation of the Marital Rape Exemption

The marital rape exception, as enacted in Exception 2 to Section 375 of the Indian Penal Code, 1860, is a gross contravention of the basic rights guaranteed under Part III of the Constitution of India. It provides an unwarranted legal immunity to husbands who commit rape on their wives, thus undermining the very essence of constitutional morality, gender equality, and personal autonomy.

Violation of Article 14: Right to Equality Before Law

Central to the constitutional criticism is Article 14, which promises "equality before the law and equal protection of the laws" to all individuals. The marital rape exception generates an unreasonable distinction between wedded and unwedded women, providing legal protection against rape to only the latter. This kind of differentiation has no intelligible differentia and serves no proper state purpose, and hence fails the twin criteria of reasonable classification enunciated in *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75 and reaffirmed in *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.¹²

The premise of irrevocable consent to sexual intercourse on marriage is not merely patriarchal and archaic, but it also deprives married women of the legal protection available to other women and makes them second-class citizens. The denial by the state to all women equally of the protection of criminal law regardless of their marital status makes the exception discriminatory, arbitrary, and violative of Article 14.

Violation of Article 15: Prohibition of Discrimination on the Grounds of Sex

Article 15(1) clearly prohibits the state from discriminating against any of its citizens on the grounds of sex. The marital rape exception enables the establishment of a legal regime under which a woman's bodily autonomy turns on her marital status and gender. It legitimates the gendered domination that is built into a husband's unfettered sexual access to his wife and perpetuates deeply entrenched patriarchal norms.

Additionally, the inability to criminalize rape within marriage is evidence of a discriminatory

¹² *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75. <https://indiankanoon.org/doc/1849862/>

government policy that downplays the sexual violence committed against wedded women. The Supreme Court in *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1, pointed out that laws and policies should be gender-stereotype-free and they ought to pursue substantive equality. The marital rape exception does the exact opposite: it codifies a sex-based stereotype that a wife is property and that her consent is either perpetual or immaterial.

Violation of Article 21: Right to Life and Personal Liberty

Article 21 ensures the right to life and liberty, which has been interpreted widely to encompass dignity, privacy, bodily integrity, and autonomy. Marital rape is a serious violation of a woman's right to live with dignity and personal freedom. It degrades the woman to the status of an object of conjugal right, eroding her dignity as a human person with control over her own body.

In *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, the Supreme Court reiterated that the right to privacy encompasses bodily and decisional autonomy, most notably in issues concerning sexuality and intimate relationships. Likewise, in *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, it was held that reproductive and sexual autonomy are an inherent component of Article 21.

In addition, in *Joseph Shine v. Union of India*, (2018) 2 SCC 189, the Court declared Section 497 of the IPC (adultery) to be unconstitutional, holding that marriage does not lead to the abandonment of fundamental rights. The judgment statutorily acknowledged that classifying women as objects of control or subordination in marriage is constitutionally prohibited.

The acknowledgement of intimate partner violence as a violation of autonomy and dignity has international echoes in international human rights documents, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which India is a signatory. The inability to criminalize marital rape violates India's obligations under such agreements, requiring states to ensure women are protected against all sorts of violence, including in the family.¹³

¹³ **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, Dec. 18, 1979. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

Judicial Trends and the Call for Constitutional Morality

The Indian judiciary has, over the last few years, gone ahead in a progressive manner to further gender justice and constitutional morality. The Court has time and again reasserted that constitutional rights do not end at the door of marriage, and that personal relations have to stay in line with the overall paradigm of equality, liberty, and dignity.

The persistence of the marital rape exception is against this constitutional path. It continues to enforce a feudal concept of marriage which is incompatible with a contemporary constitutional democracy. The Court's dicta in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 also reiterate that the Constitution is a living instrument, and has to adapt to the changing values of human dignity and freedom.

The marital rape exception runs contrary to the basic canons of the Indian Constitution of equality, non-discrimination, personal liberty, and dignity. By exempting a particular category of sexual violence from criminal prosecution, the law deprives justice to millions of women and sanctions abuse in the institution of marriage. The Supreme Court's changing jurisprudence explicitly prefers the legal recognition of marital rape as an offence, consonant with constitutional imperatives as well as international human rights standards.

The moment has come for the Indian state to shed patriarchal dregs and acknowledge that consent in marriage is as inviolable as outside it. Consistency with the Constitution requires nothing more than the abolition of the marital rape exception and the acknowledgment of every woman's right to control her body, irrespective of her marital status.

Societal Impact and Psychological Trauma:

The consequences of marital rape do not only extend to the physical act itself; they are also a broad range of psychological, emotional, and social consequences that deeply impact the survivor's health. Survivors of marital rape are likely to develop depression, anxiety, post-traumatic stress disorder (PTSD), insomnia, and suicidal tendencies. These psychological consequences are then added to by the absence of societal awareness and legal recourse. Where marriage is romanticized and the roles of women are culturally defined in terms of their capacity to maintain familial harmony, revealing abuse is frequently accompanied by skepticism, blame, or exclusion.

The trauma that survivors endure is not just interior but also exterior, appearing in the form of strained relationships, isolation, and economic reliance on the abuser. Women who try to get help are discouraged by relatives, shamed by societal norms, or dismissed by police forces. The legal establishment's hesitation in accepting marital rape as a crime perpetuates an endemic culture of silence and impunity that further marginalizes the victim. The shame of abandoning a marriage, particularly in rural and conservative communities, usually pushes women to suffer further abuse, with consequent long-term psychological trauma.

In addition, the effect of marital rape also reaches children who are exposed to the violence. Such children have increased chances of developing behavioral issues, emotional vulnerabilities, and a skewed perception of gender roles and relationships. They can recreate these poisonous patterns within their own adult lives, continuing a cycle of violence and domination. The intergenerational impact of marital rape emphasizes its wider implications, not only for specific families but society as a whole. Stopping marital rape is thus not a women's matter it is a public health and social justice issue that requires immediate legal, institutional, and cultural interventions.

The implications of marital rape are far more extensive than the immediate bodily violation, including a complex and deeply ingrained network of psychological, emotional, and social repercussions that significantly erode the survivor's overall well-being and quality of life. In contrast to other sexual assaults, marital rape tends to be invisibilized by dominant social norms and legal structures, which further compounds the trauma experienced by survivors. The psychological effects of such abuse are also complex: victims often endure debilitating psychiatric illness like clinical depression, chronic anxiety, and post-traumatic stress disorder (PTSD). They often experience severe sleep disturbances, recurring nightmares, and overwhelming feelings of fear and helplessness. The psychological trauma caused by such abuse is at times so intense that survivors contemplate or even attempt suicide, a horrific testament to the intense despair and isolation that they feel.

These psychological impacts are compounded by the overall socio-cultural context that deliberately negates the very reality of marital rape. In most societies, especially in societies where marriage is romanticized as a holy institution and where conventional gender roles place women in the role of ensuring familial harmony, that a husband would violate his wife's bodily

autonomy is not just unimaginable but is received with flat denial. ¹⁴Women reporting abuse in marriage tend to meet disbelief, victim-blaming, or exclusion. Cultural pressure to defend family honor and maintain marriage no matter what elicits an environment that is not welcoming to survivors, where telling their stories can lead to further victimization instead of support.

The trauma within survivors is therefore not just internal within the psychological domain; it is also external through distorted interpersonal relations and social isolation. Most women see their support networks depleted as friends, family, and community members pull away due to stigma or demands for silence. Economic reliance on the perpetrator also adds to the vulnerability of the victim, particularly where women's access to education, work, and separate economic resources is restricted. This reliance on them in fact holds survivors of domestic violence captive, as escaping is viewed by them and their children as a means of ceasing to exist.

Efforts made by survivors to obtain assistance are most often defeated by family discouragement, social stigmatization, and institutional hostility or indifference. Family members can advise silence to prevent scandal; communities can ostracize the victim as a troublemaker; and police can downplay complaints or refuse investigation based on prevailing patriarchal biases and limited legal recognition of marital rape. The legal system's unwillingness to recognize marital rape as a criminal offence not only denies justice to survivors but also creates a culture of impunity. This institutional failure further drives home the message that a husband's sexual right in marriage is legal and beyond question, further isolating the victim and extending the cycle of abuse.

The stigma of separation or divorce, especially in rural and conservative environments, usually compels women to tolerate continued abuse in order to maintain social respectability and family unity. The dread of isolation, financial struggles, and possible consequences for the futures of children burdens survivors, who might feel that suffering through abuse is the lesser of two evils. The resulting dynamic produces extended exposure to physical and psychological trauma, with feelings of chronic health issues, low self-esteem, and emotional numbness down the road.

¹⁴ **Amita Dhandra**, "Conjugal Violence and the Indian Legal Scenario", (2000) 1 Indian J. Gender Stud. Available on: <https://journals.sagepub.com/home/ijg>

Furthermore, the effects of marital rape spill over to result in deep impacts on children witnessing the abuse. Exposure to sexual violence in the home shatters a child's sense of safety and stability, leading to a heightened risk of behavioral problems, emotional vulnerabilities, and developmental delays. Children exposed to sexual violence tend to internalize distorted gender role and relationship ideas, accepting violence and control as a part of close relationships. Consequently, they are under increased risk of continuing or becoming victims of abusive relationships as adults, thus perpetuating the intergenerational legacy of trauma and subordination.¹⁵

The expansive impact of marital rape underscores its relevance not as a personal or family problem but as a public and social health issue. Combatting marital rape requires a multi-pronged strategy involving immediate legal reforms criminalizing and prosecuting the crime effectively, institutional reforms to deliver survivor-centered services, and cultural interventions targeting the erosion of dangerous patriarchal attitudes and stigma. It is only with concerted legal, social, and educational measures that society can start to end the cycle of violence and provide survivors with the justice, dignity, and healing they deserve. The identification of marital rape as a serious human rights abuse is critical to promoting gender equality and creating a culture of respect and security within the home the bedrock of society.

Comparative Jurisprudence:

Worldwide, legal systems have increasingly acknowledged the built-in unfairness of excluding marital rape from the purview of criminal law. In the United Kingdom, the exemption for marital rape was removed in 1991 in the landmark case of *R v. R*, in which the House of Lords decided that a husband could be prosecuted for raping his wife. This ruling was a clear departure from British jurisprudence, confirming that marriage does not equate with irrevocable consent to sexual intercourse. Comparable legal changes have been made in the United States, with all 50 states recognizing marital rape as a criminal act, although with differences in enforcement and penalty.

In South Africa, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 specifically criminalizes marital rape and recognizes the right of every person to bodily integrity regardless of their marital status. Nepal, which shares similar social norms with India,

¹⁵ Law Commission of India, **Report No. 172: Review of Rape Laws**, (2000). <https://lawcommissionofindia.nic.in/101-169/Report172.pdf>

has criminalized marital rape under its Penal Code, demonstrating a growing commitment to gender justice and human rights. These legal traditions not only endorse the universality of sexual autonomy but also offer pragmatic suggestions for how the laws on marital rape can be formulated and enforced without destabilizing marriage as an institution.

India, which is a signatory to many international human rights conventions like CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), remains behind. The UN Committee on the Elimination of Discrimination Against Women has again and again called upon India to eliminate the marital rape exception and bring its domestic laws up to international standards. Disregarding such suggestions not only violates India's international human rights obligations but also erodes its moral and legal credibility regarding gender equality issues. By learning from foreign jurisdictions, India can design a thoughtful legal response that meets the need for protection without sacrificing due process, thus upholding the principles of justice and equality written into its Constitution.

Around the world, courts have increasingly come to understand the inherent unfairness and constitutional contradiction of excluding marital rape from the reach of criminal law. The classical common law principle suggesting irrevocable consent to sex upon marriage has slowly been disassembled in most jurisdictions, because it so starkly conflicts with modern ideals of bodily autonomy, personal dignity, and gender equality.

A turning point in this development came in the United Kingdom in the case of *R v. R* (1991). There, the House of Lords firmly overruled the relict common law rule that a husband could not be guilty of raping his wife. The court ruled that such an exemption had no role to play in contemporary law and reaffirmed that marriage does not involve an ongoing, irrevocable consent to sexual acts. The ruling was a turning point in British jurisprudence, upholding the principle that consent must be continuous and freely given, even in the context of the marital relationship. It heralded a wider legal and social change toward the acceptance of women as independent human beings that are deserving of complete domination of their own bodies.¹⁶

The United States has, in the same way, experienced a slow but complete overhaul of this situation. While traditionally most American states legally allowed or partially excused marital

¹⁶ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (adultery case that discusses constitutional morality and gender equality) <https://indiankanoon.org/doc/58995698/>

rape from prosecution, this has undergone dramatic alteration in the last couple of decades. As of the current date, all 50 states prohibit marital rape, though varying degrees of enforcement, legal definitions, evidentiary standards, and severity of punishment persist. This change is an acknowledgment that the marital partnership need not be used as a privilege to commit sexual violence and that all people, married or not, are entitled to legal protection from non-consensual intercourse.

South Africa is another useful model to consider. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 makes marital rape a crime by name and is based on a rights-oriented framework in the South African Constitution. The law states the right of all individuals to bodily integrity, privacy, and dignity, without exception for the presence of a marital relationship. The South African legal system thus proves that it is quite feasible to maintain the sanctity of marriage while, at the same time, making sure that it does not serve as a veil for violence or coercion.

Nepal, which is a South Asian nation with deeply ingrained patriarchal traditions and social patterns akin to those of India, has adopted a progressive measure by criminalizing marital rape in its Penal Code. This legislative action demonstrates Nepal's changing commitment to gender justice and human rights, indicating a desire to push back against deeply rooted cultural habits that disrespect women's bodily autonomy. Nepal's strategy demonstrates that effective legal reform is possible even in conservative cultures, if there is enough political will and national debate.

These global precedents emphasize an emerging worldwide consensus: marriage must never deprive an individual of the right to manage his or her own body. Legal validation of marital rape as a criminal act ensures that the universal rule of sexual autonomy and consent cannot be traded for anything else. Further, these jurisdictions prove that criminalization of marital rape is not required to undermine the marriage institution but serves to strengthen the institution of marriage by grounding it on respect, consent, and dignity.

Conversely, India still has a marital rape exception under Section 375 of the Indian Penal Code that considers sexual intercourse by a man with his own wife (as long as she is above 18 years) not as rape. This exception is a direct contradiction to the values imbibed in the Indian Constitution, such as the right to equality (Article 14), non-discrimination (Article 15), and life

and personal liberty (Article 21).¹⁷

While India is a signatory to various international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), its domestic law has not yet been brought in line with international obligations. The UN Committee on the Elimination of Discrimination Against Women has repeatedly expressed extreme concern with regard to India's exception regarding marital rape and has urged legislative change firmly. Ongoing disregard of such suggestions not only discredits India's global commitments but also degrades its authority on international forums that promote gender justice and human rights.

In addition, by not criminalizing marital rape, India effectively sends the message that rape within marriage is a matter for the home, beyond the reach of state intervention and legal recourse. This creates an unsafe legal vacuum that places millions of women beyond the law and further consolidates patriarchal attitudes treating women as men's property.

India is not without options, however. By studying the legal systems in countries such as the UK, the US, South Africa, and Nepal, India can develop a sophisticated and culturally appropriate legislative model. Such a model will be able to provide due process protections to the accused while at the same time protecting the bodily autonomy and dignity of married women. Legal reform is not necessarily likely to undermine the institution of marriage it can, rather, strengthen it by establishing marital relationships on grounds of mutual respect, consent, and equality and thus realizing the vision of constitutional morality.

In summary, it is time for India to shed colonial-era legal remnants and face up to the systemic injustice of marital rape exception. Mimicking best international practice and incorporating a rights-based perspective into national law will not only align India with international norms but also promote the cause of substantive gender equality among millions of Indian women.

Arguments For and Against Criminalization:

The criminalization of marital rape debate is controversial, raising legal, social, cultural, and psychological factors. Criminalization's proponents are that a lack of legal definition for marital

¹⁷ **Universal Declaration of Human Rights**, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948). <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

rape sustains system-wide gender violence, maintains patriarchal norms, and deprives women of their universal rights. They stress that there must be consent in every sexual act, be it within or outside marriage, and that marriage can never be used as a general permit for sexual access. Criminalizing marital rape thus represents an essential measure toward the realization of constitutional promises of equality, dignity, and personal liberty.

Human rights groups and feminist scholars further contend that the marital rape exemption is contrary to international legal commitments, including those under the CEDAW. They claim that the existing law encourages impunity and does not offer enough protection to women. The psychological trauma and physical damage inflicted by marital rape are no lesser than those caused by rape by strangers, and usually more harmful due to the violation of trust. Supporters emphasize that criminalizing marital rape would not only give a sense of justice and reparations to victims but also act as an all-important societal deterrent toward the ultimate goal of gender equality.

Conversely, critics of criminalization most typically fear misapplication of the law. They contend that false claims under matrimonial cases may cause family disintegration, abuse of legal provisions, and harassment of husbands. Certain cultural and religious voices hold that such legislation intrudes upon the privacy and sanctity of the conjugal union, which is considered a sacred institution in Indian society. There is also fear that criminalizing marital rape will result in an explosion of litigation, burdening an already over-packed judicial system.

Although these issues are worthy of consideration, they do not outweigh the value of continuing to deny legal protection to victims of marital rape. Abuse of power is a risk with every law, such as those involving theft, murder, and domestic violence. However, the legal system does not shy away from criminalizing these offenses. Procedural protections like the insistence on corroborative evidence, judicial scrutiny of arrests, and sanction for false complaints can be put in place in order to avoid abuse without denying justice to real victims. Above all, the dignity of marriage should not be based on suffering or silence it has to be based on mutual respect and agreement. Legal reform has to prioritize gender justice and human rights over backward-looking cultural norms.

The controversy over the criminalization of marital rape in India is a highly complex and nuanced issue that calls upon legal, social, cultural, and psychological reflection. It has at its

heart a basic conflict between conventional attitudes to marriage and changing perceptions of personal autonomy, bodily integrity, and human rights. The legal defence of marital rape, as codified in Section 375 of the Indian Penal Code, is an outdated patriarchal model where marriage has been viewed as an irreversible agreement that ensures unqualified sexual access to the husband. Such a perception is now largely inconsistent with prevailing constitutional values and international human rights principles.¹⁸

Supporters of criminalization posit that persistent legal impunity for marital rape serves to perpetuate state-endorsed gender-based violence and normalize deeply ingrained patriarchal assumptions that reduce women to mere subordinates of their husbands. By precluding the potentiality of rape in marriage, the law in effect sanctions non-consensual sex and erases the underlying principle of sexual autonomy. Their point is that consent has to be clear, ongoing, and withdrawable in all sexual activity, regardless of the partners' relationship. Marriage cannot and should not be used as a general permit for sexual access; not only does this devalue the independence of women but also legitimizes coercion and violence in what is a professedly sacred institution.

From a constitutional point of view, the marital rape exemption violates the fundamental rights enshrined in the Indian Constitution, specifically Articles 14 (right to equality), 15 (prohibition of discrimination), 19 (freedom of expression), and 21 (right to life and personal liberty). It excludes women from the equal protection of the law and reinforces discrimination on grounds of gender and marital status. Criminalization of marital rape is therefore not simply a piece of legislative change it is a constitutional imperative designed to protect the values of dignity, freedom, and gender justice.

Civil society groups, jurists, and feminist activists also point out that India's inability to criminalize marital rape is a breach of its obligations under international law, including treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). General Recommendations made by the CEDAW Committee have specifically urged State Parties to abolish the exemption for marital rape. The continued existence of this exemption not only betrays India's commitment to international human rights standards but

¹⁸ LiveLaw, "**Marital Rape Exception Under Challenge: Major Delhi HC Split Verdict**" (2022). <https://www.livelaw.in/top-stories/marital-rape-delhi-high-court-split-verdict-justice-hari-shankar-justice-shakdher-199326>

also reflects institutional insensitivity to the lived experiences of millions of women.

The emotional trauma and bodily injury caused by marital rape are generally as devastating as, or even more devastating than, those caused by stranger rape. The mere fact that the violence is caused by the person with whom the survivor is in a trust and intimacy relationship makes it more traumatic. Survivors are usually victimized silently because of stigma, fear of revenge, economic reliance, and absence of legal recourse. Declaring marital rape a crime would validate the survivor's experience, provide pathways for justice and healing, and have a broader deterrent effect by conveying society's intolerance for sexual violence in all its permutations.¹⁹

On the other hand, critics of criminalization protest that the law may be abusively used, especially in cases of matrimonial conflicts like divorce and custody. They contend that phony claims can cause husbands to be harassed, disrupt family structures, and cause frivolous litigation to rise. These arguments tend to be framed in a discourse that romanticizes marriage as a sacred and intimate sphere that the State must not violate. Cultural and religious groups often cite the inviolability of the marital union, maintaining that legal control of marital affairs would erode Indian family values and cohesion.

But although these grounds are entitled to procedural consideration, they do not support the wholesale exclusion from the law's protection of victims of sexual violence in marriage. The risk of abuse is present with all penal provisions whether theft, homicide, or family violence but the law does not react by decriminalizing these offenses. Rather, it attempts to reconcile justice with due process in the form of protective procedures. For marital rape, the same mechanisms can be used, i.e., providing for corroborative evidence, judicial scrutiny prior to arrest, and penalizing false/malicious complaints under the existing laws like Section 211 of the IPC. These measures provide a means to allay concerns regarding abuse without compromising the rights of actual survivors.

Notably, the idea that the sanctity of marriage should protect criminal acts is fundamentally unsound. A bond based on respect, trust, and consent between two individuals cannot be combined with violence and coercion. Silence, submission, or endurance should never be the

¹⁹ Justice Verma Committee Report on Amendments to Criminal Law (2013). <https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>

pillar of conjugal harmony. The legitimacy of the marriage institution hinges on an understanding of equal agency of both spouses. Reforms in law in this context must thus elevate human dignity, gender equality, and justice above traditional cultural pressures or diffused apprehensions of societal instability.²⁰

In short, criminalising marital rape is not just an issue of law reform but a challenge to India's commitment to the rights and dignity of its women. It requires changing attitudes in society, legal endorsement of autonomy within marriage, and rethinking marital relations on the basis of equality and consent. By sealing this yawning legal loophole, the Indian legal system can take its first step towards being a more equitable and fair institution for everyone.

Recommendations:

Based on the analysis laid above, some immediate suggestions can be advanced to plug the legal and social vacuum around marital rape in India. Most importantly, the Indian Penal Code needs to be altered to abolish Exception 2 to Section 375 so that the blanket exemption for husbands is withdrawn. This change would provide equal protection by law for all women, whether married or unmarried, from sexual abuse.

Secondly, a specific law criminalizing marital rape must be enacted, with well-defined terms, conditions of evidence, and procedural protections to secure fairness to the accused and justice for the victim. The law must be harmonized with other legislation, such as the Protection of Women from Domestic Violence Act and the Code of Criminal Procedure, to secure total protection.

Thirdly, police and judicial officers need to undergo gender-sensitization training to deal with complaints of marital rape in a sympathetic, unbiased, and professional manner. Comprehensive training would assist in doing away with victim-blaming behavior and in instilling confidence in the necessity of consent in every relationship. Fourthly, public awareness campaigns need to be initiated to raise people's consciousness about the facticity of marital rape, dispel prevalent myths, and instill the ideals of bodily autonomy and gender equality. Media, civil society, and education institutions can play an important role in reframing the mentality of society.

²⁰ Ratna Kapur, *Too Hot to Handle: The Cultural Politics of Sex and Violence in India*, 23(1) Feminist Legal Stud. 1 (2015). <https://link.springer.com/article/10.1007/s10691-015-9286-6>

Fifth, survivor support services should be reinforced, such as access to psychological counseling, legal assistance, emergency shelters, and economic rehabilitation. There should be a coordinated system including police, hospitals, NGOs, and the judiciary to ensure comprehensive and timely help to victims. In the long term, incorporating consent education into school curricula can assist in promoting a respect-based culture of equality and non-violence at an early age.²¹

CONCLUSION:

Marital rape is one of the most widespread but legally invisible forms of gender-based violence in India. It symbolizes a failure of the system to acknowledge women as equal partners in marriage, deserving dignity, control over their bodies, and freedom from violence. Marital rape exception provided in Section 375 of the IPC is a remnant of colonial and patriarchal law having no place in a modern democratic state pledged to constitutional morality and human rights. The refusal to grant legal relief to victims of marital rape is not only a violation of their constitutional rights but is also a denial of India's pledges to international human rights instruments.

Legalizing marital rape is not about weakening the institution of marriage it is about strengthening the values on which healthy marriages are founded: equality, consent, and mutual respect. It is about confirming that no person, on account of marriage, should be granted a free pass to violate another's body or dignity. Reform of the law must be accompanied by societal change, and that will take a collaborative effort from lawmakers, the judiciary, civil society, and society at large.

While India is at the intersection of legal advancement and social conservatism, the moment has arrived to finally opt for the side of justice. To talk of empowering women while withholding from them the most basic right to autonomy over their own bodies is not sufficient. The law should be a protector of the weak, rather than an instrument that facilitates silence and pain. Identifying and criminalizing marital rape is not only a legal requirement it is a moral and ethical requirement for any society that considers justice, equality, and human dignity important.

²¹ Jhuma Sen, "Unmapping Marital Rape: Legal Exceptionalism, Intimacy and the Private Sphere", 17 NUJS L. Rev. 1 (2024). <https://nujslawreview.org>