

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.

MARITAL RAPE IN INDIA: THE NEED FOR CRIMINALIZATION

AUTHORED BY - GAURI SINGH
Student, Amity Law School Lucknow.

Abstract

Despite global advancements in women's rights and criminal jurisprudence, marital rape remains non-criminalized and heavily stigmatized in India. Exception 2 to Section 375 of the Indian Penal Code (IPC) legalizes non-consensual sexual intercourse by a husband with his wife, provided she is not under 18 years of age. This legal exception is not only archaic and patriarchal but also fundamentally contradicts the principles of bodily autonomy, sexual agency, and gender equality enshrined in the Constitution of India. It effectively treats marriage as a contract of irrevocable consent, rendering a married woman's right to say 'no' legally invisible.

Marital rape is a pervasive yet underreported crime due to the socio-cultural stigma attached to it and the institutional barriers that discourage victims from seeking justice. The legal impunity granted to husbands in such cases perpetuates a culture of silence and normalizes sexual violence within the supposed sanctity of marriage. This paper critically explores the socio-legal dimensions of marital rape in India, highlighting its inconsistency with constitutional rights such as Articles 14 (equality before law), 15 (prohibition of discrimination), and 21 (right to life and personal liberty), as well as with India's obligations under international conventions like CEDAW and the Universal Declaration of Human Rights.

The research delves into comparative jurisprudence to examine how other countries have reformed their legal frameworks to criminalize marital rape and protect the rights of women. Judicial pronouncements, including the landmark *Independent Thought v. Union of India* case, are analyzed to understand evolving interpretations of consent and bodily integrity. The paper also addresses common myths surrounding marital rape, such as the fear of false accusations and the protection of the marital institution, and provides evidence-based arguments against them.

Finally, the paper presents a comprehensive set of recommendations including the repeal of Exception 2 to Section 375 IPC, the formulation of a victim-centric legal framework, the strengthening of support mechanisms, and the promotion of awareness and sensitization campaigns. The central argument is that criminalizing marital rape is not an attack on the institution of marriage but a necessary step toward making it more equitable, respectful, and based on mutual consent. Recognizing and addressing marital rape is essential to achieving gender justice and upholding the dignity and rights of all women in India.

Keywords: Marital Rape, Section 375 IPC, Consent, Gender Justice, Constitutional Rights, Criminal Law Reform, Human Rights, Legal Autonomy, Patriarchy, Marital Violence

1. Introduction

1.1 Context

Due to its strong cultural, religious, and traditional roots, marriage is frequently seen as a sacred and untouchable institution in India. It is often believed that a husband and wife have a lifelong spiritual relationship in addition to a formal contract. Although this view places a strong emphasis on social harmony and family stability, it also unintentionally helps to normalise gender-based inequality in the context of marriage. The ongoing societal and legal acceptance of marital rape is one of the most urgent problems resulting from this situation.

According to the existing legal system, a husband cannot be charged with raping his wife if she is older than eighteen, according to Exception 2 to Section 375 of the Indian Penal Code (IPC). This legal protection is a holdover from colonial-era legislation that was impacted by the antiquated English common law idea that a woman gives her husband her irreversible agreement to engage in sexual activity after marriage. Such a legal framework ignores the fact that everyone, regardless of marital status, has the continuing, dynamic, and revocable right to consent.

Due to this antiquated clause, married women are essentially exempt from rape laws, establishing a two-tiered legal system based on marital status. It undermines a woman's sexual autonomy and bodily integrity by upholding the patriarchal notion that a woman's body belongs to her husband after marriage. As a result, there is a legal dilemma wherein non-consensual sex is legal if it is conducted by a husband but can be tried as rape if it is committed by a stranger.

This legal gap also has practical ramifications. Married women who experience sexual abuse frequently endure severe psychological damage, social disapproval, and a lack of institutional help. Social attitudes that stigmatise survivors, discourage reporting, and put the family's survival ahead of justice and individual rights exacerbate their predicament. Systemic shortcomings in the legal system, law enforcement, and policy-making, all of which reflect and perpetuate societal indifference, further exacerbate the silence around marital rape.

It is imperative to challenge the entrenched norms that justify such violence under the guise of marital duty. It is essential to question the long-standing conventions that use marital duty as an excuse for this kind of abuse. Regardless of a woman's marital status, the legal system must change to safeguard her rights and dignity. In addition to being required by law, acknowledging marital rape as a crime is both morally and constitutionally required. In order to support a revised legal system that preserves the values of equality, dignity, and justice, this essay aims to disentangle the many levels of legal, social, and political complications surrounding marital rape in India. Regardless of a woman's marital status, the legal system must change to safeguard her rights and dignity. In addition to being required by law, acknowledging marital rape as a crime is both morally and constitutionally required. In order to support a revised legal system that preserves the values of equality, dignity, and justice, this essay aims to disentangle the many levels of legal, social, and political complications surrounding marital rape in India. Sexual agency and bodily autonomy are flagrantly violated by marital rape. The Indian legal system overlooks the basic idea of consent by ruling out the possibility of rape within a marriage. It runs against to the Indian Constitution's tenets of equality, human dignity, and individual liberty.

1.2 Objective

The objective of this research paper is to analyze the implications of not criminalizing marital rape in India. It aims to:

- Examine the current legal framework and its inconsistencies.
- Analyze the constitutional and human rights violations involved.
- Debunk socio-cultural myths surrounding marital rape.
- Compare Indian law with global standards.
- Propose concrete legal and policy reforms.

Through this exploration, the paper aspires to advocate for legal change that ensures justice and dignity for married women.

2. Understanding Marital Rape in Legal Context

2.1 Definition and Dimensions

A type of gender-based violence known as marital rape happens when one spouse, usually the husband, coerces the other into engaging in sexual activity against their will. It frequently persists in settings of unequal power dynamics, emotional abuse, financial reliance, and social disgrace. As painful and harmful as rape by a stranger, marital rape can often be much more heartbreaking because of the violation of trust and the absence of escape or legal recourse.

Legally speaking, marital rape is an example of how the law has failed to recognise the importance of consent in all sexual interactions, including marriage. The main thesis is that a person's right to bodily autonomy should not be superseded by marriage. To put it another way, the marital tie alone does not imply consent. Regardless of the connection between the parties, every sexual act must be consensual and founded on mutual consent.

Even Nevertheless, Indian law still treats marital rape differently than other types of rape, upholding archaic and patriarchal standards. Numerous women are deprived of the opportunity to seek justice and safety from violence inside the institution of marriage due to the absence of legal recognition.

2.2 Current Legal Framework in India

Section 375 of the Indian Penal Code, 1860 (IPC) is the main clause addressing rape in Indian criminal law. According to this section, rape is any sexual act carried out in a certain situation, such as against the woman's will, without her consent, or when she is unable of giving consent because she is intoxicated, mentally sick, or afraid of getting hurt. However, marital rape is expressly excluded from the definition of rape under Section 375 IPC, Exception 2. It says: "A man having sex with his own wife, provided that she is not younger than eighteen, is not committing rape."

This means that even if a man's sexual behaviour is completely non-consensual, it is not illegal in India if he imposes it on his wife who is older than 18. The jurisprudence of the colonial past, in particular the now-abandoned English common law notion that a husband could not be accused of raping his wife because marriage implied everlasting and irrevocable agreement, is the foundation of the legal immunity granted to spouses.

Indian law is seriously contradicted by this exemption. On the one hand, the law punishes non-consensual sex as a criminal offence and recognises that it violates a woman's rights and dignity. Nevertheless, it also says that if a woman's husband does the same thing, it's acceptable, even lawful. Article 14 of the Indian Constitution guarantees equality before the law, which is violated by this dual treatment based on marital status.

The fact that other Indian legislation, such the Protection of Women from Domestic Violence Act, 2005 (PWDVA), acknowledge marital sexual assault as a type of domestic violence, further exacerbates the contradiction. A woman may pursue legal remedies under this statute, including as residency orders, protection orders, and damages for suffering brought on by her husband's sexual abuse. However, the IPC does not consider the same abuse to be a criminal offence, underscoring the inconsistent and disjointed character of India's legal system.

Furthermore, the reasoning for the marital rape exception has started to be questioned by court observations. The Supreme Court ruled down Exception 2 in the case of *Independent Thought v. Union of India* (2017), ruling that having intercourse with a minor wife (one who is between the ages of 15 and 18) constitutes rape. The criminal legal system has yet to address the larger problem of marital rape involving adult women, despite the fact that this was a historic decision safeguarding child brides.

The marital rape exclusion not only violates the Constitution but also compromises India's commitments under international human rights law. India is required to eradicate all types of violence against women, including inside marriage, as a signatory to agreements such as the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All types of Discrimination Against Women (CEDAW). India has been urged on numerous occasions by the UN Committee on CEDAW to make marital rape a crime and guarantee that all types of sexual violence are dealt with equally.

In conclusion, there is a clear gap in India's current rape laws. Indian law essentially denies justice to a sizable group of rape survivors—married women—by upholding the marital rape exception. This refusal is in violation of India's obligations under international law in addition to local constitutional guarantees. Criminalising marital rape is no longer a choice; it is now necessary for a nation that aspires to gender justice and equality.

Additionally, the contradiction is glaring when compared to other laws:

- Article 21 of the Constitution guarantees the right to life and personal liberty, which includes the right to live with dignity;
- The Protection of Women from Domestic Violence Act, 2005 acknowledges sexual abuse within marriage.

References

- Indian Penal Code, 1860 – Full text of Section 375 and Exception 2.
- *Independent Thought v. Union of India*, (2017) 10 SCC 800.
- The Protection of Women from Domestic Violence Act, 2005.
- Law Commission of India, 172nd Report (2000).

3. Constitutional and Human Rights Violation

When it is not illegal, marital rape directly violates both international human rights standards and fundamental constitutional principles. The marital rape exception under Exception 2 to Section 375 IPC undercuts the fundamental tenets of equality, liberty, and human dignity that the Indian legal system aims to preserve. This section goes into detail about how India is morally and legally obligated to maintain international commitments, fundamental rights, and constitutional provisions by not making marital rape a crime.

3.1 Violation of Article 14 and 21

Article 14 – Equality Before Law and Equal Protection of Laws

All people are guaranteed equal protection under the law and equality before the law under Article 14. It represents the dedication to treating all citizens equally, without arbitrary discrimination, and is a pillar of the Indian Constitution. However, this premise is explicitly violated by the marital rape exception. It establishes an irrational distinction between married and single women, allowing the latter to pursue rape justice while the former is unable to do so if the offender is her spouse. This is against the Supreme Court's doctrine of intelligible differentia, which was created to evaluate the legality of classifications made in accordance with Article 14.

The goal of rape legislation, which is to safeguard the autonomy and integrity of the body, has no logical connection to the distinction made between women based only on marital status. Consequently, this kind of classification is discriminatory, unfair, and unconstitutional. This legal loophole allows the state to deny justice to married women, a sizable portion of the

population, based only on marriage-related social constructions.

Article 21 – Protection of Life and Personal Liberty

The Supreme Court has interpreted Article 21 to encompass a wide range of human rights, including the right to privacy, the right to sexual and reproductive autonomy, the right to bodily integrity, the right to life, and the right to live with dignity.

- All of these rights are violated when forced sex occurs during a marriage. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the court ruled that the right to life encompasses the right to live with dignity and bodily integrity. A woman who has been raped in marriage loses her self-respect and control over her body.
- **Right to Privacy:** In the historic case of *Justice K.S. Puttaswamy v. Union of India* (2017), the Court ruled that the right to privacy, which includes the freedom to make decisions about one's body and intimate relationships, is a basic right under Article 21. This right is violated by marital rape since it disregards a woman's right to consent.
- **Reproductive Autonomy:** In *Suchita Srivastava v. Chandigarh Administration* (2009), the Court emphasized that reproductive choices are central to personal liberty. A woman's decision to engage in or abstain from sexual activity is intrinsic to her reproductive rights. Marital rape removes her agency in this decision-making process.
- **Reproductive Autonomy:** The Court stressed that reproductive decisions are essential to individual liberty in *Suchita Srivastava v. Chandigarh Administration* (2009). A woman's reproductive rights are inextricably linked to her choice to have sex or not. Her autonomy in this decision-making process is taken away by marital rape.

Thus, the marital rape exception reduces the woman to an object of sexual access, undermining her **agency, control, and freedom**, and thereby breaching Article 21.

3.2 Violation of Article 15 – Prohibition of Discrimination

Among other things, Article 15 forbids discrimination based on sex. The state establishes a gendered privilege—one that directly benefits men at the expense of women's rights, security, and bodily integrity—when it imposes a statute that exempts exclusively men from prosecution for rape within marriage.

This exception upholds a historical system in which women are supposed to be passive recipients of male sexual entitlement and supports women's subordination inside marriage. The state's failure to treat women as equal citizens deserving of complete protection under the penal code and the sheer presence of this legal exception are reflections of institutionalised patriarchy.

The law's current interpretation conveys the harmful idea that a woman's right to bodily autonomy is subordinated to her husband's rights. Both the letter and the spirit of Article 15 are broken by this.

3.3 Violation of India's International Human Rights Obligations

Numerous international treaties and declarations that acknowledge marital rape as a grave human rights violation have been ratified by India. India is not upholding its obligations under international law by keeping Exception 2 to Section 375 IPC.

The Convention to End All Forms of Discrimination Against Women, or CEDAW,

In 1993, India ratified CEDAW. The CEDAW Committee has repeatedly chastised India for failing to make marital rape a crime.

Article 2 of the Convention requires nations to end all kinds of discrimination against women, including laws, customs, and practices that encourage violence against women. The Committee explicitly said in 2014 and 2022 that the marital rape exclusion is in conflict with CEDAW and suggested that it be changed right away.

Universal Declaration of Human Rights (UDHR)

The UDHR provides protection from cruel, inhuman, or degrading treatment (Article 5) as well as the rights to life, liberty, and personal security (Article 3). Marital rape is considered a cruel and demeaning conduct. The denial of these fundamental human rights and state-sanctioned impunity result from the Indian government's failure to acknowledge it as a criminal offence.

ICCPR (International Covenant on Civil and Political Rights)

Torture and cruel, inhuman, or degrading treatment are forbidden by Article 7 of the ICCPR. In addition to violating the ICCPR, India's persistent inaction on making marital rape a crime also contradicts the UN Human Rights Committee's ruling that rape, including marital rape, is a violation of this covenant.

Declaration on the Elimination of Violence Against Women (1993)

Marital rape is specifically listed as a type of violence in this proclamation. It exhorts states to take all reasonable steps to stop, look into, and punish violence against women. India fails the due diligence criteria because it is unwilling to change its laws. Women face institutional obstacles in reporting abuse, obtaining justice, and obtaining governmental protection when criminalisation is absent.

3.4 Inconsistency Between Constitutional Morality and Social Morality

The need to preserve constitutional morality over dominant social morality has frequently been underlined by the Indian judiciary. For instance, the Court decriminalised homosexuality in *Navtej Singh Johar v. Union of India* (2018), holding that the state must defend a person's right to autonomy and dignity, even if those rights go against social norms. Similarly, outmoded social morality that sees marriage as a realm exempt from examination is the foundation for the continued legality of marital rape. The constitutional principles of equality, decency, and consent must take precedence over this antiquated viewpoint. Individual rights must supersede customary or religious defences of destructive behaviours, according to the idea of constitutional primacy.

References

- Constitution of India:
 - Article 14 (Equality before law)
 - Article 15 (Non-discrimination)
-

4. Socio-Cultural Barriers and Myths

In India, the problem of marital rape is not just a legal one; it is ingrained in the nation's sociocultural fabric. The patriarchal ideas of marriage, gender roles, and sexuality that are still prevalent in Indian society provide significant obstacles to the identification and prosecution of marital rape. Widely held myths and misconceptions that skew the public's perception of justice, consent, and gender equality are what keep these barriers in place. This section examines some of the most pervasive social beliefs that support or legitimise marital rape and examines how these ideas hinder survivors' access to justice and legal reform.

4.1 The Myth of Implied and Perpetual Consent

The idea that a woman's consent is provided automatically when she marries and cannot be withdrawn is one of the most pervasive myths about marital rape. This viewpoint is based on antiquated, patriarchal beliefs that view marriage as a contract in which the wife becomes her husband's sexual property.

According to this perspective, marriage entails eternal and irreversible sexual consent, which means that a wife must always comply with her husband's sexual requests, regardless of her emotional or physical state or inclination to do so.

There are serious problems with this belief. Consent is a continuous, impassioned, and revocable agreement that needs to be present at every sexual contact; it is not a one-time, general authorisation. A woman's liberty and dignity are not negated by marriage. In actuality, mutual respect and consent are prerequisites for any relationship, regardless of how personal. An individual's right to make independent decisions over their body is protected by Articles 14, 15, and 21 of the Indian Constitution; marriage cannot be an exception to these rights. Because it perpetuates the idea that husbands have an uncontested sexual entitlement over their women, this myth continues to be one of the most powerful ideological obstacles to the criminalisation of marital rape.

4.2 Fear of Misuse and False Allegations

The concern that women may abuse the law to harass their husbands, particularly during times of marital strife or divorce procedures, is another prevalent defence against making marital rape a crime.

Although laws protecting women (such Section 498A IPC and domestic abuse legislation) frequently prompt this fear, it is not specifically specific to marital rape. Instead, it reflects a strong suspicion of women and the assumption that most accusations are untrue or motivated by retaliation. Nevertheless, there is no data to support this perception. Actually:

- Multiple independent studies and data from the National Crime Records Bureau (NCRB) demonstrate that underreporting of sexual violence is a much greater issue than fraudulent reporting.
- The argument of misuse was bluntly rejected by the Justice Verma Committee (2013), which examined India's criminal legislation following the Nirbhaya gangrape case. The committee

strongly advocated for the criminalisation of marital rape.

There is a chance of abuse in every aspect of the law, including fraud, murder, and theft. However, however does not excuse denying real victims justice. The answer instead resides in establishing strong protections, guaranteeing due process, and enhancing the ability of the legal and investigative systems to distinguish between true and fraudulent claims.

A risky precedent that can be used to excuse passivity in the face of any violation of human rights is the suggestion that laws shouldn't be passed because they might be abused.

4.3 The Sanctity of Marriage and Family Integrity

Criminalising marital rape, according to many conservative and religious organisations, will undermine the institution of marriage and promote family dissolution. This point of view considers legal interference in marital intimacy issues to be an infringement on personal space and a danger to cultural customs.

But this reasoning puts the idea of marriage ahead of the victims' actual experiences. Coercive, violent, and fear-based relationships are not sacred unions; rather, they are places of oppression. The fundamental basis of marriage as a union based on mutual respect and trust is undermined when violence is legalised or ignored in the sake of upholding family honour.

Abusers must not be shielded by the concept of "sanctity." Marriage is not and should not be an excuse for sexual assault. By reaffirming that marriage must be a respectful and consenting partnership, recognising marital rape and offering survivors compensation actually enhances the institution of marriage.

Furthermore, Indian courts have already stepped in to address personal and family law issues in other domains—for instance, by banning child marriage and instant triple talaq—despite arguments that doing so would undermine cultural or religious customs. Rightfully, upholding oppressive traditions has been subordinated to defending constitutional rights.

4.4 Cultural Conditioning and Silence Around Sexuality

Talking about sex, consent, and marital intimacy is frowned upon in many regions of India. Girls are frequently raised to feel that their role is to serve their husbands and to put family honour ahead of their own well. Education regarding body autonomy and sexual rights is either nonexistent or very limited. Consequently:

- Many women are unaware that marital rape qualifies as abuse. Lifelong indoctrination may lead them to view forced sex in marriage as acceptable or natural.
- Survivors frequently experience pressure to "adjust" or "compromise" rather than speak out, which can result in severe psychological trauma and long-term health consequences; victims of marital rape face stigma and disbelief from family, community, and even law enforcement, which further discourages reporting and seeking justice.

Instead of confronting societal denial, the law mirrors it, and abuse is made possible by the cultural silence about sex and gender-based violence.

4.5 Misinterpretation of Religion and Traditions

According to certain conventional or religious ideas, a wife's marital responsibilities include sexual subordination. Religion cannot be used to excuse violence or overrule constitutional rights, even though it may have been in the past when it came to the interpretation of ancient texts or cultural practices.

Individual rights in India, a secular democratic republic, are protected by the Constitution rather than by religious or customary law. Religious customs cannot supersede fundamental rights, as the Supreme Court has maintained in a number of decisions, such as *Shayara Bano v. Union of India* (Triple Talaq case).

No cultural or religious tradition can excuse the denial of equality, dignity, and justice to half of the population, which are guaranteed by the Constitution.

References

- Justice Verma Committee Report (2013), especially on myths of consent and potential misuse.
- Amnesty International India reports on gender-based violence, 2022.
- UN Women. "Understanding Consent: Breaking Myths in Marriage", Policy Brief, 2019.
- Ministry of Women and Child Development, Government of India, Awareness and Survey Reports

5. Comparative Jurisprudence

Many nations have acknowledged the inherent inequity in such legal loopholes and have changed their criminal laws accordingly, even if India still exempts marital rape from criminal punishment. Understanding how other legal systems have handled the matter, upheld the consent principle, and destroyed patriarchal legal concepts is made possible by studying comparative jurisprudence. This section examines significant international legal advancements and compares them to India's slow progress in criminal justice reform with regard to marital rape.

5.1 Countries That Criminalize Marital Rape

Several countries have criminalized marital rape, affirming that consent is essential regardless of marital status:

- Marital rape is illegal in a number of nations, confirming that consent is necessary regardless of marital status:
- United Kingdom: The House of Lords eliminated the marital rape exemption in *R v. R* (1991).
- In the United States, marital rape is illegal in all 50 states. In Canada, South Africa, and Nepal, it is illegal as well, indicating a move towards gender-sensitive jurisprudence.

5.2 India's Lag in Reforms

India is one of the few democratic nations that does not yet have laws against marital rape, despite the growing international consensus and its own fundamental principles of equality, dignity, and personal liberty. Legislative reticence, patriarchal ideals, and cultural conservatism all contribute to the resistance to changing this area of the law.

Justice Verma Committee Recommendations (2013)

The Justice Verma Committee was established by the Indian government to recommend changes to the country's sexual assault legislation in the wake of the Nirbhaya gang rape case. "The fact that the accused and victim are married to each other should not be a valid defence against the charge of rape," the Committee, which was made up of distinguished jurists and legal experts, firmly advocated in order to remove Exception 2 to Section 375 IPC. This suggestion was turned down by the Indian government, which stated that making marital rape a crime would "destabilise the institution of marriage" and be "difficult to prove." Social

conservatism was given precedence above victim justice and constitutional principles in this approach.

Delhi High Court Split Verdict (2022)

The Delhi High Court issued a divided decision in 2022 about a number of petitions contesting the marital rape exception. A judge ruled that Exception 2 was illegal, citing violations of Articles 14 and 21. The second judge maintained the exemption, arguing that Parliament, not the courts, must make any such changes. The lack of judicial agreement and the continuous conflict between progressive constitutional interpretation and legislative stagnation are reflected in this split ruling. As a result, the matter is currently pending a final constitutional decision before the Supreme Court of India.

India's International Isolation

India is excluded from international human rights norms due to its stance on marital rape. Marital rape has been made a crime in nations with comparable socioeconomic difficulties and patriarchal systems because they view it as a violation of fundamental human autonomy and dignity. India's unwillingness to update its criminal justice system and bring it into compliance with its international and constitutional obligations is indicated by its refusal to follow suit.

References

- *Independent Thought v. Union of India* (2017) 10 SCC 800.
- *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1.
- *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1.
- *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1.
- Delhi High Court Split Verdict on Marital Rape (2022), *RIT Foundation v. Union of India*, W.P. (C) 284/2015.

6. Judicial Approach and Cases

The criminalisation of marital rape in India has been delayed by legislative lethargy, but the judiciary has become a venue for substantive discussion and partial resolution of the problem. Despite frequently being limited by the wording of the law, Indian courts—particularly the Supreme Court and several High Courts—have recognised the inequities inherent in the marital rape exception.

The contradictions between legislative silence and judicial activism, the possibilities for progressive constitutional interpretation by the judiciary, and significant judicial pronouncements that have addressed or touched upon the topic of marital rape are all examined in this section.

6.1 Supreme Court and High Court Observations

Independent Thought v. Union of India (2017) – A Landmark Ruling

The Supreme Court considered Exception 2 to Section 375 IPC in this case, which at the time permitted a husband to engage in sexual relations with his wife even if she was just 15 years old, even though the legal consent age was 18.

This contradiction was contested by the petitioner, who claimed that it promoted child marriage and infringed upon the rights of the girl child.

- The Supreme Court ruled that sexual contact with a wife who is between the ages of 15 and 18 will be regarded as rape, reading down the marital rape exception.

The Court stressed that consent is crucial, even in marriage, and concluded that a minor's marital status could not supersede their physical autonomy.

The decision marked a major step forward, recognising that marriage does not negate a woman's right to bodily integrity and consent, particularly in the case of child brides, even though it did not criminalise marital rape for adult women.

Delhi High Court Split Verdict (2022)

A series of cases contesting the legitimacy of the marital rape exception under Section 375 IPC were heard by the Delhi High Court in 2022.

A divided ruling emerged from the verdict: • Justice Rajiv Shukdhher ruled that Exception 2 was unconstitutional, citing violations of Articles 14, 15, and 21 of the Constitution. According to him, consent is essential to sexual autonomy and marriage should not be a reason for an exception.

But Justice C. Hari Shankar wasn't in agreement. Although marital rape is ethically and socially unacceptable, he decided that criminalising it was a matter for legislative policy rather than the

courts.

The case was sent to the Supreme Court, which will make the final decision, as a result of the divide. Given that it addresses the fundamental questions of equality, consent, and bodily autonomy, the ruling is anticipated to establish a national precedent.

Supreme Court's Progressive Interpretations of Consent and Privacy

Although the Supreme Court has not yet directly ruled on the matter for adult women, it has established the constitutional basis for criminalising marital rape in a number of significant instances.:

- In Justice K.S. Puttaswamy v. Union of India (2017), the Court acknowledged that, in accordance with Article 21, privacy is a fundamental right.
- It claimed that autonomy over decisions, particularly those pertaining to sexual relations, and bodily integrity are both aspects of privacy. In the 2009 case of Suchita Srivastava v. Chandigarh Administration, the Court upheld a woman's right to bodily autonomy and reproductive choice, both of which are components of her personal liberty under Article 21.
- . Navtej Singh Johar v. Union of India (2018): o The Court reaffirmed the notion that individual consent and dignity supersede outmoded social norms by declaring that constitutional morality must take precedence over social morality when decriminalising homosexuality.

These rulings obviously support a legal framework in which consent is unalienable, even inside marriage, even though they do not specifically address marital rape.

6.2 The Need for Judicial Activism

The judiciary has a crucial role to play in maintaining constitutional values when lawmakers fail to act. There are solid precedents for judicial action in cases involving abuses of fundamental rights, even though courts normally defer to Parliament on matters of policy. For example: Despite religious and cultural sensitivities, the Supreme Court has stepped in to interpret personal laws, such as in the triple talaq case; courts have invalidated discriminatory

clauses and inserted progressive interpretations into antiquated legislation, particularly when those laws violate individual rights.

The courts have the authority and duty to declare Exception 2 unlawful because the marital rape exception blatantly contradicts Articles 14 (equality), 15 (non-discrimination), and 21 (life and dignity). In addition, the Justice Verma Committee made it clear that the court should not be reluctant to defend women's rights despite legislative resistance when it recommended making marital rape a crime.

Judicial Limitations

The judiciary has limited authority to handle marital rape, even in the face of progressive verdicts. Judges frequently state that legislative action is necessary for comprehensive criminal law reform. If judges are perceived as going beyond their authority to make policy decisions, there is also a chance of reaction. Because of this, effective reform requires cooperation between the legislative and the court. The courts have the authority to establish the constitutional framework and invalidate discriminatory clauses, but Parliament is required to pass a comprehensive, victim-centered statute on marital rape that includes definitions, protocols, and safeguards.

References

- Justice Verma Committee Report (2013).
- Law Commission of India, 172nd Report (2000).
- Government of India – Written responses to Rajya Sabha and Parliamentary Standing Committee discussions on marital rape (2013–2022).
- Criminal Law (Amendment) Acts, 2013 and 2018.
- Reports from Lawyers Collective and Human Rights Law Network on pending bills and gaps in legislation.

7. The Legislative Inertia

Subsequent Indian governments have opposed implementing change despite growing legal, constitutional, and human rights considerations supporting the criminalisation of marital rape.

One of the biggest obstacles to justice for victims of sexual assault in marriage is this hesitancy, which is sometimes called legislative inertia.

Marital rape is noticeably unaddressed in India's criminal laws, despite the country's lawmakers passing progressive legislation in other areas of gender justice, such as the Protection of Women from Domestic Violence Act (2005), the Criminal Law (Amendment) Act (2013), and laws against sexual harassment in the workplace.

The causes of legislative inaction, the effects of such a delay, and the pressing need for parliamentary intervention are all critically examined in this section.

7.1 Repeated Refusals by the Government

The criminalisation of marital rape has been demanded by numerous committees and court rulings over the years, but the Indian Parliament has continuously done nothing.

- The removal of Exception 2 from Section 375 IPC was specifically suggested in the 2013 Justice Verma Committee Report, which was created in response to the Nirbhaya gang rape case. "The accused and victim's marital status should not be a legitimate defence against the charge of rape," it declared.
- The Government of India rejected this specific recommendation, citing the "complexity of the issue" and the possibility of "misuse" of the law, despite the report's thoroughness and broad popular support.

There has been no legislative proposal to make marital rape a crime, despite the Delhi High Court's split decision in 2022 and growing calls from civil society, women's rights advocates, and legal professionals. Despite strong evidence and legal arguments that the exemption infringes against fundamental rights guaranteed by Articles 14, 15, and 21 of the Constitution, the hesitancy persists.

7.2 Political and Social Conservatism

Political and cultural conservatism are important causes of legislative slowness. Politicians frequently worry that making marital rape a crime will:

- Undercut traditional Indian society's "family values."

• During marital conflicts or divorce proceedings, it may result in unfounded allegations and improper use of the law. A strong patriarchal mentality that sees marriage as a private, untouchable zone where the government shouldn't meddle is reflected in these arguments. They disregard the fact that intimate partner violence occurs in many Indian homes and that not making marital rape a crime normalises abuse and deprives women of legal protection.

Moreover, electoral politics frequently come into play. Politicians are hesitant to back such reforms for fear of offending conservative voters, religious communities, or male voters. Human rights and gender justice thus take a backseat to political expediency.

7.3 The Law Commission's Position

Legislative slowness has also been exacerbated by the Law Commission of India's inaction. Although the topic was covered in a few previous publications (such as the 172nd Report from 2000), the Commission did not firmly advocate criminalisation. The Law Commission asked the public in 2018 if they thought it was time to make marital rape a crime. However, this project has not yet produced a draft bill or specific recommendation. Even when the moral and legal grounds are obvious, the bureaucratic hesitancy to face up to hard social realities is highlighted by the delay.

7.4 Absence in Legislative Bills and Criminal Law Reforms

In recent years, India has proposed a number of changes to its criminal code, particularly in response to high-profile cases of sexual assault. These consist of:

- The Criminal Law (Amendment) Act, 2013: Added new offences such as stalking and voyeurism and strengthened the penalty for rape.

- The Criminal Law (Amendment) Bills of 2018 and 2020: These bills changed procedures and suggested the death sentence for child rape. Nevertheless, despite mounting calls from civil society, none of these laws addressed marital rape. Marital rape was purposefully left out of the bill's purview or removed from discussion in each instance, demonstrating a pattern of avoidance.

7.5 Consequences of Legislative Inaction

This delay has significant and wide-ranging effects:

- Married women are still not legally shielded from one of the most prevalent and harmful types of sexual assault.

The Domestic Violence Act forces victims to rely on civil remedies, such as restraining orders or compensation, but not criminal punishment. The law reinforces gender inequality and patriarchal dominance by sending a message that a woman's consent is no longer essential after marriage.

- Because of the unclear legal status of such offences, law enforcement officials are frequently perplexed or reluctant to file complaints.

The judiciary faces a predicament as progressive judges are bound by antiquated legal requirements that only Parliament has the authority to amend.

7.6 The Need for Immediate Legislative Reform

The Indian legislature ought to take immediate action to make marital rape a crime, considering the severity of the issue and its constitutional ramifications.

This would entail:

- Removing Section 375 IPC's Exception 2, which would make non-consensual sex illegal regardless of a person's marital status.
- Adding a new section or explanation that makes it clear that consent is necessary for all sexual relationships, including marriage.
- Making sure that, like other criminal laws, there are protections against abuse, such as appropriate requirements for proof and sanctions for making false accusations.
- Educating law enforcement and judges on how to respond tactfully and sympathetically to incidents of marital rape.

8. Conclusion

One of the most pervasive yet legally unrecognised types of sexual assault in India is marital rape. Because of Exception 2 of Section 375 IPC, which expressly exempts men from prosecution for raping their wives, the crime of rape is still beyond the purview of criminal law

even if it violates a woman's physical autonomy, dignity, and right to live free from violence. The institutional denial of women's sexual autonomy inside marriage, which has its roots in antiquated colonial beliefs and is upheld by contemporary patriarchy, is reflected in this legal exemption. As a result, two groups of women are established by the law: married women, who are not granted the protection of rape laws due to their marital status, and unmarried women, who are.

In addition to being ethically wrong, this scenario is unsupportable under the constitution. It is against the rights outlined in the Indian Constitution's Articles 14 (equality before the law), 15 (prohibition of discrimination), and 21 (right to life and personal liberty). Consent is fundamental to personal liberty and dignity, as highlighted by a number of seminal rulings by Indian courts. However, in their closest relationships, married women are still denied this basic privilege.

India is also in breach of its international commitments under treaties like CEDAW, ICCPR, and the Universal Declaration of Human Rights, which all call for the eradication of gender-based violence in both public and private domains, by refusing to make marital rape a crime.

The moral, legal, and constitutional arguments in favour of making marital rape a crime are abundantly evident throughout this essay. The criminalisation of marital rape is not only possible but also necessary to preserve the principles of sexual consent and bodily integrity, as demonstrated by comparative jurisprudence from nations such as the United Kingdom, the United States, Canada, South Africa, and Nepal. Even nations with comparable legal and cultural customs have advanced, realising that marriage cannot be an excuse for mistreatment.

India is lagging behind due to political hesitancy, societal stigma, and legislative delay rather than the complexity of the problem. The objections to criminalisation, such as the worry that it would be abused, the danger to the institution of marriage, or the difficulty of obtaining consent, are ill-founded and primarily patriarchal. Although it is possible for any criminal legislation to be abused, victims have never been denied justice because of this. Particularly in cases like *Independent Thought v. Union of India* and in more general decisions on privacy, consent, and bodily autonomy, the judiciary has made some progress. Nevertheless, the law continues to fail millions of women who experience sexual assault in marriage without any chance of criminal remedy in the absence of legislative reform.

India needs to perform the following actions in order to proceed:

- Removing Section 375 IPC's exception for marital rape.
- Acknowledge that consent is a necessary component of all sexual interactions, including married ones.
- Raise awareness of the facts surrounding marital rape among the general public, law enforcement, and the court.
- Put in place survivor-centered legal and support structures that offer rehabilitation, healing, and justice.

The institution of marriage is not being attacked by making marital rape a crime. Instead, it is an essential step in transforming marriage into a place of equality, respect, and consent. It's about making sure that outdated legal exemptions don't keep women in abusive situations. Its purpose is to reiterate that no marriage or other relationship should be used as an excuse for sexual abuse.

Silence on such a serious infraction is no longer acceptable in a democratic and constitutional republic like India. The moment has arrived to hear survivors' stories, prioritise constitutional morality over cultural customs, and acknowledge marital rape as a crime that has to be denounced, prosecuted, and eradicated.

References

1. Indian Penal Code, 1860
2. Constitution of India
3. Justice Verma Committee Report, 2013
4. Independent Thought v. Union of India (2017)
5. R v R [1991] UKHL 12
6. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
7. Law Commission of India, Report No. 172
8. Amnesty International India Reports
9. Ministry of Women and Child Development
10. United Nations Universal Declaration of Human Rights
11. The Protection of Women from Domestic Violence Act, 2005
12. Articles and Editorials from The Hindu, Indian Express, and The Wire