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MARITAL RAPE IN INDIA: A CONSTITUTIONAL AND COMPARATIVE ANALYSIS OF THE LEGAL EXCEPTION

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Abstract

India remains one of the few countries that has not criminalised marital rape, retaining a colonial-era exception that grants husbands immunity from prosecution for non-consensual sexual acts with their wives. This paper examines the legal framework surrounding marital rape in India through a constitutional lens, analysing the exception's origins in Sir Matthew Hale's perpetual consent doctrine and its survival in the Bharatiya Nyaya Sanhita, 2023. The paper evaluates the split verdict in *RIT Foundation v. Union of India*, which encapsulates the judicial divide on this issue, and traces the fragmented judicial response that has emerged through prosecutions under other provisions. Drawing on comparative analysis with jurisdictions that have abolished similar exemptions, the paper argues that the marital rape exception violates Articles 14, 15, and 21 of the Constitution and perpetuates patriarchal stereotypes that deny married women bodily autonomy. The paper concludes with recommendations for legislative abolition and institutional reform to align Indian law with constitutional guarantees of equality and dignity.

Keywords: Marital Rape, Consent, Constitutional Law, Gender Justice, Bodily Autonomy, Criminal Law Reform

1.Introduction

Marital rape, defined as non-consensual sexual intercourse between spouses, represents one of the most contested areas of contemporary criminal law discourse in India. Despite significant legal reforms in response to gender-based violence, India continues to maintain a legal exception that immunises husbands from prosecution for rape. This exception, rooted in colonial-era jurisprudence, perpetuates the fiction of irrevocable marital consent and denies married women the fundamental right to bodily autonomy guaranteed under the Constitution.

The persistence of the marital rape exception raises profound questions about the relationship

between constitutional rights and criminal law, the role of judicial interpretation in advancing gender justice, and the tension between traditional conceptions of marriage and modern understandings of consent. While the Supreme Court has progressively expanded the scope of constitutional protections for women, including the decriminalisation of adultery and the recognition of privacy as a fundamental right, the marital rape exception remains untouched by legislative reform.

This paper examines the legal and constitutional dimensions of marital rape in India, tracing its historical origins, analysing its current legal framework, and evaluating judicial responses to challenges against the exception. Through comparative analysis with jurisdictions that have abolished similar exemptions, the paper argues for the urgent need to criminalise marital rape and align Indian law with constitutional guarantees of equality, dignity, and bodily integrity.

2. Historical Origins of the Marital Rape Exception

The marital rape exception in Indian law traces its origins to English common law and the patriarchal doctrine articulated by Sir Matthew Hale in 1736. Hale declared that "the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract". This doctrine of perpetual consent—the notion that marriage constitutes an irrevocable grant of sexual access—was subsequently codified in colonial statutes, including the Indian Penal Code, 1860.

Exception 2 to Section 375 of the IPC provided that "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape". This provision reflected Victorian morality that constructed marriage as a hierarchical and proprietary institution, subsuming the wife's legal personality into that of her husband through the doctrine of coverture.

The retention of this exception after independence in 1947 represents a conscious choice to preserve colonial-era norms that treat women as subordinate within marriage. Although the United Kingdom abandoned the marital rape exemption in 1991 through the landmark House of Lords ruling in *R v R*, India has maintained this anachronistic provision, even as it has reformed other aspects of its criminal law.

3.The Constitutional Framework: Rights and Violations

3.1 Article 14: Right to Equality

The marital rape exception violates Article 14 of the Constitution, which guarantees equality before the law and equal protection of laws. Justice Rajiv Shakhder, in his opinion in *RIT Foundation v. Union of India*, characterised the exception as a "firewall" that arbitrarily insulates one class of putative rapists—married men—while exposing every other offender to prosecution.

The exception fails the reasonable classification test: it distinguishes identically situated victims purely on marital status without any rational nexus to the object of rape legislation, namely the preservation of sexual autonomy. A married woman who is raped by her husband is denied the same legal protection available to an unmarried woman who is raped by a stranger or acquaintance. This distinction is arbitrary and discriminatory, treating married women as less deserving of legal protection than their unmarried counterparts.

3.2 Article 15: Prohibition of Discrimination

The exception constitutes discrimination on the ground of sex, disproportionately affecting women who bear the burden of non-consensual sexual acts within marriage. By creating a legal presumption that married women have consented to all sexual acts with their husbands, the law reinforces patriarchal stereotypes about women's subordination within marriage.

The Supreme Court has consistently held that laws based on gender stereotypes are constitutionally impermissible. In the context of decriminalising consensual sexual intercourse between homosexual adults, the Court observed how penal provisions that discriminate on grounds of gender stereotypes grant state-sanctioned legitimacy to such discrimination. The marital rape exception similarly lends the authority of the Indian State to intimate partner violence and perpetuates patriarchal stereotypes that dehumanise married women.

3.3 Article 21: Right to Life and Personal Liberty

The Supreme Court has expansively interpreted Article 21 to include the right to bodily integrity, privacy, and dignity. In *K.S. Puttaswamy v. Union of India*, the Court recognised privacy as a fundamental right, encompassing decisional autonomy and bodily integrity. In *Joseph Shine v. Union of India*, the Court struck down adultery provisions as unconstitutional, affirming women's autonomy and equality within marriage.

The marital rape exception is fundamentally inconsistent with these constitutional principles. It denies married women the right to determine whether and when to engage in sexual activity,

treating their bodies as subject to spousal entitlement rather than personal autonomy. By immunising husbands from prosecution, the state actively facilitates violations of women's bodily integrity within the private sphere of marriage.

4. The Legal Landscape in India

4.1 The Bharatiya Nyaya Sanhita, 2023

The enactment of the Bharatiya Nyaya Sanhita, 2023, was anticipated as an opportunity to reform India's colonial-era criminal law and address longstanding deficiencies, including the marital rape exception. However, the BNS has retained the exception in substance under Section 63, which provides that "sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape".

This retention represents a missed opportunity for legislative reform and confirms that the state continues to prioritise traditional notions of marriage over constitutional guarantees of equality and dignity. The government has defended this position, arguing that criminalising marital rape would be "excessively harsh" and threaten the institution of marriage.

4.2 The Protection of Children from Sexual Offences Act

The Supreme Court's judgment in *Independent Thought v. Union of India* (2017) represents a significant, though limited, judicial intervention. The Court held that sexual intercourse by a man with his wife aged between 15 and 18 constitutes rape, raising the age threshold in the exception from 15 to 18 to harmonise the IPC with the POCSO Act.

While this judgment provided protection to child brides, it deliberately avoided addressing the constitutional validity of the marital rape exception for adult women. The Court's ratio turned on statutory conflict between the IPC and POCSO, not on a substantive repudiation of the marital-consent fiction. This judicial restraint has left the constitutional question unresolved for women above the age of 18.

4.3 The Verma Committee Report

The Justice Verma Committee, constituted in the aftermath of the 2012 Nirbhaya gang rape, strongly recommended that marital rape be criminalised. The Committee reasoned that marriage should not be a licence for sexual violence and that the marital rape exception must be deleted.

Despite these recommendations, the government rejected the proposal, citing concerns about potential misuse of the law and threats to the institution of marriage. The Criminal Laws

Amendment Act, 2013, which implemented other recommendations of the Verma Committee, notably did not address the marital rape exception, leaving it intact.

5. Judicial Engagement: The RIT Foundation Case

5.1 The Split Verdict

The constitutional validity of the marital rape exception was directly challenged in *RIT Foundation v. Union of India*, with a Division Bench of the Delhi High Court delivering a split verdict in May 2022. The two judges adopted diametrically opposed positions that encapsulate the legal and social divide on this issue.

Justice Rajiv Shakdher's Opinion: Justice Shakdher held that the marital rape exception violates Articles 14, 15, and 21 of the Constitution. He reasoned that the exception creates an arbitrary classification between married and unmarried women, failing the reasonable classification test. He emphasised that transformative constitutionalism requires courts to interpret laws in light of evolving social values and constitutional principles, and that the exception perpetuates outdated patriarchal norms that treat women as subordinate within marriage.

Justice Shakdher further held that the exception is inconsistent with the object of rape legislation, which is to protect sexual autonomy. By immunising husbands from prosecution, the law denies married women the same protection available to all other women, violating the constitutional guarantee of equality.

Justice C. Hari Shankar's Opinion: Justice Shankar upheld the marital rape exception, invoking legislative competence and separation of powers. He argued that Parliament consciously created the exception and that courts should defer to legislative judgment in matters of social policy. He also raised concerns about potential misuse of the law, including the risk of false accusations by wives against husbands motivated by personal or economic gain.

Justice Shankar held that the legislature could classify offences by recognising varying "degrees of evil," and that the distinction between marital and non-marital rape was reasonable. He further argued that treating marital sex as rape would be disproportionate and could destabilise marriage as an institution.

5.2 The Constitutional Question Before the Supreme Court

In the absence of a majority, the matter now lies before the Supreme Court. The Court has agreed to examine whether husbands can be prosecuted for causing physical hurt and mental trauma through sexual acts, even if the marital rape exemption bars rape prosecution.

The pending challenge raises fundamental questions about the court's role in advancing gender

justice, the constitutional validity of laws that perpetuate gender-based discrimination, and the relationship between fundamental rights and the institution of marriage. The outcome of this case will have profound implications for women's rights and gender equality in India.

6. Fragmented Judicial Response: Mislabelled Harm

The continuing impunity for marital rape has led prosecutors and judges to search for other doctrinal footholds to address sexual violence within marriage, resulting in a fragmented and inconsistent judicial response. Two provisions have been invoked to remedy harms arising from marital sexual violence: Section 377 of the IPC (criminalising "unnatural sex") and Section 498A (criminalising "cruelty").

6.1 Section 377 and Its Misapplication

Recent High Court rulings have extended the marital rape immunity to prosecutions under Section 377, effectively licensing all sexual acts within marriage. In *Gorakhnath Sharma v. State of Chhattisgarh*, the Chhattisgarh High Court acquitted a man who allegedly forced anal intercourse on his wife, resulting in fatal injuries, of all charges. The Court relied on the marital rape exception to bar prosecution under Section 377, declaring that once a wife is over 18, her consent is legally presumed even for non-penetrative sexual activity.

Similarly, in *Manish Sahu v. State of Madhya Pradesh* and *Banti Jatav v. State of Madhya Pradesh*, High Courts ruled that the consent of the wife is immaterial if she is above the prescribed age, regardless of the nature of the sexual act. These judgments collectively entrench the fiction of irrevocable marital consent, effectively foreclosing rape prosecutions against husbands.

6.2 Section 498A and the Harm of Misclassification

Other courts have invoked Section 498A of the IPC, which criminalises cruelty by husbands and their relatives, to address harms arising from marital sexual violence. However, this provision is ill-suited to capture the specific harm of sexual violation. Criminalising marital rape as "cruelty" rather than rape mislabels the harm, treating sexual violence as a form of marital discord rather than a violation of bodily autonomy.

The judicial tendency to channel marital rape into other criminal provisions leads to what scholars term "harms of fit and labelling"—the failure to adequately recognise the nature of the offence and provide appropriate legal responses. This fragmented response underscores the urgent need for comprehensive legislative reform.

7.Comparative Analysis

7.1 International Developments

India's continued non-criminalisation of marital rape places it among a diminishing minority of countries that maintain such exemptions. The global trend has been toward abolition of the marital rape exception, reflecting growing recognition that marriage does not eliminate the requirement of consent.

United Kingdom: The House of Lords in *R v R* (1991) abolished the marital rape exemption, holding that the old idea that a wife gives irrevocable consent to sexual intercourse is unacceptable today. The Court explicitly acknowledged that marriage has evolved into a partnership of equals, not a dominance of husband over wife.

United States: All fifty states had criminalised marital rape by the early 1990s, although legal provisions and sentencing vary widely. The US legal system broadly affirms that marriage does not eliminate the requirement of consent.

Canada: Canada repealed the marital rape exemption in 1983, recognising spousal sexual assault in the same manner as any other sexual assault. This early reform reflected growing awareness of sexual autonomy and gender equality.

South Africa: The Sexual Offences Act of 2007 criminalised marital rape, although enforcement remains limited by societal stigma. This legislative reform represents an important step toward recognising women's bodily autonomy within marriage.

European Union: Nearly all member states of the European Union recognise marital rape as a crime. Germany amended its rape laws in 1997 to include spousal rape expressly, following sustained pressure from women's rights organisations. Sweden requires affirmative consent in all sexual activity, regardless of the relationship between the parties.

7.2 India's Exceptionalism

India remains one of 36 countries that have not criminalised marital rape, alongside Pakistan, Bangladesh, and several Middle Eastern nations. The persistence of the marital rape exception reflects a broader failure to align Indian law with international human rights standards, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India has ratified.

The contrast with other common-law jurisdictions that have abolished similar exemptions is particularly striking. The United Kingdom, Australia, New Zealand, Canada, and South Africa have all reformed their laws to recognise that marriage does not constitute consent to non-consensual sexual acts. India's retention of the colonial-era exception represents a failure to

evolve with changing social values and constitutional principles.

8.Socio-Legal Implications

8.1 Health Consequences

Research has documented the severe health consequences of marital rape for survivors. Victims experience higher rates of post-traumatic stress disorder, anxiety, depression, gynaecological disorders, and poor physical health outcomes. The health consequences are compounded by the unique trauma of living with the perpetrator and the lack of legal recourse.

Studies have found that wives who experience non-consensual sex within marriage face higher rates of unwanted pregnancy, sexually transmitted infections, and psychological distress. The lack of legal recognition of marital rape as a criminal offence exacerbates these health consequences by preventing survivors from seeking appropriate medical and legal support.

8.2 Social and Cultural Dimensions

The continuing non-criminalisation of marital rape reflects patriarchal social norms that treat women as subordinate within marriage. In a society where marriage is considered a sacred institution and women's roles are often defined in relation to their husbands, the criminalisation of marital rape faces significant cultural resistance.

The government's defence of the marital rape exception—including concerns about "destabilising marriage" and the risk of false accusations—reflects these patriarchal norms and perpetuates a legal framework that denies married women the fundamental right to bodily autonomy.

9.Recommendations for Reform

9.1 Legislative Reform

The primary recommendation is the abolition of the marital rape exception from the Bharatiya Nyaya Sanhita, 2023. This reform should be accompanied by the explicit inclusion of spousal rape within the definition of rape, recognising that marriage does not constitute consent to non-consensual sexual acts.

The Justice Verma Committee's recommendation that marriage should not be a licence for sexual violence must be implemented. The legislative abolition of the marital rape exception is essential to align Indian law with constitutional guarantees of equality, dignity, and bodily autonomy.

9.2 Evidentiary Reforms

Given the private nature of marital rape and the difficulty in gathering evidence, evidentiary reforms are necessary. The application of Section 120 of the Bharatiya Sakshya Adhiniyam, 2023, which provides a presumption as to the absence of consent, should be extended to cases of marital rape. This presumption requires the accused to rebut the presumption of non-consent, relieving the victim of proving the absence of consent beyond reasonable doubt.

This reform would recognise the lived realities of married women facing intimate partner violence and the nature of domination experienced by them. It would also address concerns about evidentiary difficulties that have been cited as an obstacle to prosecuting marital rape.

9.3 Institutional and Sensitisation Reforms

Legislative reform alone is insufficient. Institutional reforms are necessary to ensure effective implementation of laws criminalising marital rape. This includes training for police officers, prosecutors, and judges on issues of sexual violence within marriage, and the establishment of support services for survivors.

Sensitisation programmes should address patriarchal stereotypes that treat women as subordinate within marriage and educate the public about the importance of consent in all sexual relationships. Judicial understanding of the issue must evolve to recognise that marriage is a partnership of equals, not a relationship of dominance.

10. Conclusion

The continuing non-criminalisation of marital rape in India represents a significant constitutional deficit. The colonial-era exception, rooted in patriarchal norms that treat women as subordinate within marriage, violates Articles 14, 15, and 21 of the Constitution. The persistence of the exception, despite constitutional jurisprudence on bodily autonomy and equality, reflects a failure to recognise married women as subjects of rights deserving of equal legal protection.

The split verdict in *RIT Foundation v. Union of India* encapsulates the judicial divide on this issue and underscores the urgent need for resolution by the Supreme Court. The outcome of this case will have profound implications for gender justice in India, determining whether the country will follow the path of transformative constitutionalism or remain legislatively conservative in upholding the bodily autonomy and dignity of women in marriage.

Comparative analysis with jurisdictions that have abolished similar exemptions demonstrates that the criminalisation of marital rape is both constitutionally required and practically achievable. As one of the few countries that still maintain such exceptions, India's continued non-criminalisation of marital rape represents a failure to evolve with changing social values and international human rights standards.

The path forward requires comprehensive reform: the legislative abolition of the marital rape exception, evidentiary protections for survivors, institutional capacity-building, and societal sensitisation. Only through such reforms can Indian law align with constitutional guarantees of equality, dignity, and bodily autonomy for all women.

References

1. Chandra, R., Srivastava, S., Singh, A., Mukherjee, S., & Patel, J. K. (2023). A scoping review on exploring the urgency of criminalising marital rape in India. ScienceDirect
2. Kadyan, S., & Unnithan, N. P. (2025). The Continuing Non-Criminalization of Marital Rape in India: A Critical Analysis. *Women & Criminal Justice*, 35(3), 205-218
3. Mookherjee, I., & Bhatia, M. (2025). Discarding the Marital Rape Exemption: From Fundamental Rights to Vulnerability Theory. Oxford Human Rights Hub
4. Chattopadhyay, A. (2025). The Legislative Lacuna in the Backdrop of Rape Laws. *International Journal of Law Management & Humanities*, 9(3)
5. *Independent Thought v. Union of India*, (2017) 10 SCC 800
6. NLS Forum. (2025). Challenging the Marital-Consent Fiction: India's Fragmented Response to the Marital Rape Exception. *National Law School of India Review*
7. Ali, S. M. A., & Ghose, A. (2025). Criminalisation of marital rape in India: a medico-legal analysis. *International Journal of Public Law and Policy*, 11(3), 354-371
8. *Unsafe in my own home: a sociolegal study of violence against women in India's private sphere*. (2022). Stanford University
9. Vashisht, A., & Munjal, P. (2025). Understanding India's Perspective on Marital Rape through the lens of *RIT Foundation v. Union of India*. *International Journal of Law Management & Humanities*
10. The Times of India. (2026). Does marital rape law shield men from unnatural sex prosecution?
11. Dwivedi, S. (2025). Marital Rape in India: Call for Legal Reform. *International Journal of Law Management & Humanities*, 8(3), 1108-1132