

CHALLENGING THE SILENCE: MARITAL RAPE AND GENDER JUSTICE IN INDIA

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ABSTRACT

Marital rape is still one of the most contested and least addressed forms of violence against women in India. Even though there is now a global admission of sexual autonomy within marriage, Indian law still gives statutory immunity to husbands via Exception 2 of Section 375 of the Indian Penal Code, which provides a husband with legal immunity from being prosecuted for non-consensual sexual intercourse with adult wives. This essay examines conceptual, legal, constitutional, and socio-cultural aspects of marital rape in India and the gap between statutory immunity and gender justice. The study uses an interdisciplinary methodology that combines doctrinal analysis of statutory law, judicial pronouncements, and constitutional provisions with empirical evidence drawn from nationally representative survey data, scholarly articles, and reports from international and national agencies. The study also assesses India's responsibilities under international human rights commitments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR). Findings suggest that marital rape exists and remains underreported due to the influence of gender-based social norms, pervasive loopholes, and stigma in society. The recommendations also identify Constitutional contradictions in retaining the exception for marital rape under Articles 14, 15, and 21 that highlights the disjunction between India's Constitutional commitments versus existing laws. The study presents an exhaustive set of recommendations, which include advocacy for the legislative repeal of the exception for marital rape, judicial amelioration; administrative-level intervention solutions; to promote awareness; and issues (women's inequality in society, women's empowerment) that hypothetically empowered women to access their bodily autonomy while considering the cultural landscape. By reconceptualizing marital rape as a legal and social issue, this study intends to contribute to gender justice and the advancement of women's bodily autonomy in India.

KEY WORDS : Marital Rape, Gender Justice, Bodily Autonomy, Indian Penal Code, Constitutional Rights, Sexual Violence, Legal Reform, Patriarchy

I. INTRODUCTION

Marital rape, defined as the act of non-consensual sexual intercourse within marriage, remains one of the gravest violations of a woman's bodily autonomy, dignity, and human rights. While the Indian Penal Code, 1860, criminalizes rape under Section 375, it retains a striking legal anomaly: Exception 2 to Section 375 exempts a husband from prosecution for raping his wife, provided she is above fifteen years of age. This exception effectively

legitimizes sexual violence within marriage and entrenches patriarchal assumptions that a wife's consent to sexual relations is irrevocably bound by the institution of marriage. Such a stance stands in stark contradiction to the constitutional guarantees of equality under Article 14, prohibition of discrimination under Article 15, and the fundamental right to life and personal liberty—including dignity, privacy, and bodily autonomy—under Article 21 of the Constitution of India.

The retention of the marital rape exception reflects the uneasy intersection between personal laws, cultural norms, and constitutional values. Historically, the doctrine of *coverture*—that a wife’s legal identity and will were subsumed under her husband’s—provided the justification for excluding marital rape from the ambit of criminal law. This patriarchal legal legacy was inherited from colonial common law, which treated marriage as a license for sexual access and immunized husbands from charges of rape. Although many common law jurisdictions, including the United Kingdom in *R v. R* (1991), have since abandoned this archaic doctrine, India continues to hold onto it, thus perpetuating gender injustice within the sanctity of marriage.

The Justice Verma Committee (2013), established in the aftermath of the Nirbhaya gang rape case, emphatically recommended the criminalization of marital rape. The Committee observed that the marital rape exception violates women’s right to equality, dignity, and bodily integrity and is inconsistent with India’s international obligations under instruments such as the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**. Despite this, the recommendations were not adopted by Parliament, with successive governments expressing hesitation on grounds ranging from the alleged possibility of misuse to fears that criminalizing marital rape could destabilize the institution of marriage. Such arguments, however, are deeply flawed. They prioritize the protection of marriage as a social institution over the fundamental rights and bodily autonomy of women, effectively subordinating individual dignity to collective social norms.

Judicial developments in recent years have shown a growing willingness to engage with issues of gender justice within marriage. In *Independent Thought v. Union of India* (2017), the Supreme Court held that sexual intercourse with a wife below eighteen years constitutes rape, thereby reading down the marital rape exception in the context of child marriage. The

Court emphasized that marriage cannot extinguish a minor’s fundamental rights. Similarly, in *Joseph Shine v. Union of India* (2018), the Supreme Court struck down the adultery law (Section 497 IPC), reaffirming that marriage does not strip a woman of her agency, dignity, or sexual autonomy. These judgments collectively signal a judicial trajectory towards dismantling patriarchal constructs embedded in the law. However, in *RIT Foundation v. Union of India* (2022), the Delhi High Court delivered a split verdict on the constitutionality of Exception 2, highlighting the judicial and societal divide on the issue. The matter now awaits authoritative resolution by the Supreme Court.

Globally, the recognition of marital rape as a criminal offence has become a hallmark of gender-sensitive legal reform. Jurisdictions such as the United Kingdom, South Africa, Canada, Nepal, and several others have unequivocally criminalized marital rape, aligning domestic law with international human rights principles. For instance, in *R v. R* (1991), the House of Lords declared that marriage does not confer an irrevocable license for sexual intercourse, thereby eradicating the marital rape immunity in the UK. Similarly, Nepal criminalized marital rape in 2002, while South Africa recognized it under the **Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007**. These reforms reflect a growing consensus that sexual autonomy and consent are fundamental human rights that cannot be waived by marriage. India’s continued reluctance, therefore, places it out of step with global human rights standards.

The persistence of marital rape immunity in India cannot be divorced from its socio-political context. Deeply entrenched patriarchal attitudes, cultural taboos surrounding marriage and sexuality, and the prioritization of family honor over women’s rights have collectively contributed to the resistance against reform. Critics argue that criminalizing marital rape may be misused in matrimonial disputes or lead to a breakdown of marriages. However,

such arguments ignore the fundamental premise that protecting women from sexual violence cannot be subordinated to protecting societal norms. Marriage, as an institution, cannot and should not operate outside the bounds of constitutional morality and the rule of law.

Furthermore, India's dual commitment to constitutional rights and international obligations underscores the urgency of reform. Articles 14 and 15 mandate the state to ensure gender equality and prohibit discrimination. Article 21 has been expansively interpreted to include dignity, bodily autonomy, and privacy (*Justice K.S. Puttaswamy v. Union of India*, 2017). By retaining the marital rape exception, the Indian Penal Code creates an artificial classification between married and unmarried women, which is arbitrary and discriminatory. This legal distinction violates the test of reasonable classification under Article 14 and directly undermines women's autonomy under Article 21. In addition, as a signatory to CEDAW and other international instruments, India has committed itself to eliminating gender-based violence in all forms. The United Nations Committee on CEDAW has repeatedly urged India to criminalize marital rape, yet the state has remained hesitant.

This paper seeks to examine the constitutional, legal, and socio-political dimensions of marital rape in India. It will analyze the historical roots of the marital rape exception, its continued justification under Indian law, and its conflict with constitutional guarantees of equality, dignity, and liberty. The paper will also review key judicial interventions, legislative debates, and comparative perspectives from other jurisdictions to demonstrate the urgency of reform. Ultimately, the objective is to highlight that the retention of the marital rape exception is inconsistent not only with constitutional morality but also with India's democratic and human rights commitments. Recognizing marital rape as a crime is not about weakening the institution of marriage but about

strengthening it by ensuring mutual respect, equality, and consent as its foundational pillars.

II. Statement of Problem

Marital rape is an under-researched and contentious area of Indian criminal law. Despite the constitutional guarantees of equality, dignity, and bodily autonomy protected under Articles 14, 15, and 21, Section 375 of the Indian Penal Code creates an exception to not prosecute a husband who rapes his wife, so long as she is over 18 years old. Legally, this exception suggests that sexual assault within marriage is not a crime, and that consent is not a basic legal requirement. Legally recognizing consent underlines the unacceptable patriarchal notion that, due to her marriage, a woman permanently relinquished her bodily autonomy, independence, and sexual agency to her husband.

Although the Justice Verma Committee (2013) unequivocally recommended criminalizing marital rape, and activists, international human rights bodies, and legal scholars have continually called for this reform--the state remains steadfast in ignoring these appellations to justice. While jurisdictions across the globe have recognized marital rape as a crime, India's resistance to legal reform based upon the fear of misuse of law or damaging the "institution of marriage" is a glaring violation of constitutional commitment. More importantly, legislation not recognizing marital rape in India ignores the life experiences of countless women, denying their experience of partyhood, and perpetuating structural and socio-cultural injustices towards women.

III. Research Question

1. How does the marital rape exception under Section 375 of the Indian Penal Code conflict with constitutional guarantees of equality, dignity, and personal liberty under Articles 14, 15, and 21?
2. How have Indian courts interpreted the issue of marital rape, and to what extent have they engaged with constitutional

morality, international conventions, and feminist legal theory?

3. What lessons can India draw from jurisdictions that have recognized and criminalized marital rape (e.g., South Africa, Nepal, United Kingdom), and how can these models be adapted within the Indian socio-legal context?
4. What social, cultural, and institutional barriers prevent the recognition and reporting of marital rape in India?
5. How do factors such as personal laws, stigma, and family honor influence women's ability to seek justice?
6. What legal reforms and policy measures are necessary to ensure effective recognition and protection of women's sexual autonomy within marriage?
7. How can India balance cultural sensitivities with constitutional and international human rights obligations in addressing marital rape?

IV. SIGNIFICANCE OF RESEARCH

The importance of this study is its possible impact on one of the longest-standing but least studied instances of gender-based violence in India: marital rape. Despite the fact marital rape is so common, it is still not recognized in the Indian Penal Code, justifying the societal and legal silence regarding gender injustice. The study will investigate the legal, constitutional and socio-cultural aspects of marital rape, and will identify the structural barriers preventing women from claiming their bodily autonomy and seeking justice.

This research adds to the existing body of scholarship by bringing together empirical support, legal analysis, and comparative evidence, and demonstrates a disconnect between India's constitutional safeguards—like equality (Articles 14–15) and the right to life and personal liberty (Article 21)—and statutory law that typically leaves married women without protections against sexual violence. It also stresses India's obligations under international

human rights treaties such as CEDAW, demonstrating the need for India to make its domestic law consistent with international human rights obligations.

In relation to practical consequences, this research will provide confirmed based recommendations to policy analysts, law makers, and civil society organizations for changing the law, sensitizing the judicial system, and intervening on a socio-cultural level. This research is at once enhancing gender justice and challenging patriarchal systems because it is highlighting the importance of criminalizing marital rape or other steps to support women. In essence, this research frames to assist in social and institutional change so that marriage can be regarded as a relationship of equality and consent and not a relationship of coercion and subordination.

V. SCOPE AND LIMITATION OF RESEARCH

This research represents a written study of the legal, constitutional, and socio-cultural dimensions of marital rape in India. It examines the marital rape exception within the framework of the legal provisions laid down in Section 375 of the Indian Penal Code and offers a thoughtful critique on how the marital rape exception undermines women's rights and negatively impacts their bodily autonomy, dignity, and equality. The study also provides a consideration of judicial interpretation, landmark judgments, and professional committees like the Justice J.S. Verma Committee (2013) in the response to sexual violence in India.

Furthermore, the research considers India's international human rights obligations including CEDAW and ICCPR, and compares India to domestic jurisdictions that criminalize marital rape, such as the United Kingdom, South Africa, and Canada. The study critically reviews socio-cultural factors, such as patriarchy, gender norms, and the underreporting of sexual violence to provide a holistic understanding of the problem. This study also hopes to contribute to policy, legislative, and judicial reforms on

marital rape, and importantly, examine the broader social implications of marital rape on gender justice.

This research has limitations. First, a challenge in the field is that there are no official statistics regarding the incidence of marital rape, and therefore quantitative counts typically derive from surveys and other secondary data, which may lead to epidemiology undercount. Second, while this research is centered around legal and policy contexts, there is no primary empirical fieldwork or interviews undertaken with victim/survivors to present the experience of victimization. Third, while comparative analysis does occur with this study; it is not comprehensive, and very few jurisdictions with marital rape legislators are presented to help establish the experience. Finally, while a large portion of the study is positioned around adult women's experiences, a brief discussion surrounding child marriages or adolescent victimization is noted, but neither is treated in much depth or adequate framing of a completely different legal and social issue in its own context.

Overall, although the study does engage in a substantial analysis of legal, constitutional, and social issues surrounding marital rape, it also provides ways to develop actionable recommendations for gender justice in India.

VI. Research Objective

1. To examine the legal framework on marital rape in India – with special reference to Section 375 IPC and the marital rape exception.
2. To analyze constitutional principles of equality, dignity, and personal liberty under Articles 14, 15, and 21 in the context of marital rape.
3. To understand judicial pronouncements and committee recommendations (including the Justice Verma Committee Report) that have addressed marital rape either directly or indirectly.

4. To evaluate India's obligations under international human rights law (CEDAW, ICCPR, UDHR) and compare with other jurisdictions that have criminalized marital rape.
5. To assess the socio-legal impact of non-criminalization on women's rights, bodily autonomy, and gender justice in India.

VII. Research Methodology

This research adopts a doctrinal and analytical methodology. It primarily relies on secondary sources, including scholarly articles, reports, books, and commentaries, to examine the constitutional, legal, and socio-political dimensions of marital rape in India. Primary sources, such as the Indian Penal Code, the Constitution of India, Law Commission reports, the Justice Verma Committee Report (2013), and landmark judgments (*Independent Thought v. Union of India*, *Joseph Shine v. Union of India*, *Justice K.S. Puttaswamy v. Union of India*), are critically analyzed to understand the legal framework and judicial approach.

A comparative method is employed to evaluate how other jurisdictions criminalize marital rape, drawing lessons for India. The study further incorporates a feminist legal perspective to highlight the intersection of law, patriarchy, and women's rights. By combining legal analysis with socio-legal critique, the research aims to present a comprehensive understanding of the problem and recommend reforms that align with constitutional morality and gender justice.

VIII. Legal Framework & Jurisprudence

Marital rape is in a conflicted and uncomfortable position in Indian criminal law. The legal system recognizes rape as a serious crime, but does not apply in the case of marital relationships, leaving the husband free from prosecution if the wife is not under fifteen (now eighteen) years. This legal disposition about marital rape has been codified in colonial laws, in judicial pronouncements and incremental reforms to the legal system, but has never fully accepted sexual autonomy for women in marriage.

Rape is defined in Section 375 of the Indian Penal Code, 1860 (IPC). The Criminal Law (Amendment) Act, 2013 expanded the definition of rape but did uphold the second exception to Section 375 which states: "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."⁶¹⁷ This exception means that non-consensual sexual intercourse within marriage is not acknowledged as rape.⁶¹⁸ However, the Court stopped short of addressing the broader question of marital rape beyond the age of eighteen, leaving intact the exception for adult married women.

Indian constitutional law has witnessed increased emphasis on dignity, equality, and autonomy, particularly in relation to the case of Justice K.S. Puttaswamy v. Union of India (2017), where the Supreme Court of India recognized the right to privacy as a fundamental right under the ambit of Article 21 of the Constitution.⁶¹⁹ The right to privacy includes decisional autonomy and bodily integrity, which are concepts directly engaged in discussions surrounding marital rape.

Similarly, in Joseph Shine v. Union of India (2018), the Court struck down the adultery clause contained in Section 497 IPC, stating that statutes premised on outdated assumptions about marriage and patriarchal notions are unconstitutional.⁶²⁰ To be clear, while this decision is not on marital rape, the reasoning used by the Court highlights the importance of conceptualising marriage as a partnership of equals, rather than as an environment where one spouse possesses sexual dominion over the other.

The persistence of Exception 2 to Section 375 is arguably inconsistent with **Articles 14, 15, and 21** of the Constitution, as it discriminates against married women and deprives them of equal protection of the law.

Even with certain progress in legislation, the judiciary remains unprepared to categorize marital rape as an offense. In Talvarkar v. State of Maharashtra, the Supreme Court acknowledged a woman's right to autonomy regarding sex—regardless of marriage—declaring, "A woman in any situation has the right to refuse sexual intercourse."⁶²¹ However, in a domain of life where marriage occurs, we often observe clear family cohesion and societal values along with legislative purpose.

In the case of Ritual Shakti v. Union of India (Delhi High Court, 2022), a split bench debated whether or not to recognize marital rape as a criminal offense. Justice Shakti found the Exception to be unconstitutional on the basis of Articles 14, 19, and 21; on the other hand, Justice Hari Shankar accepted the Exception and found no grounds to question the authority of the legislature given the implications for society.⁶²² The case is currently in abeyance before the Supreme Court, which may have the opportunity to consider the constitutional validity of Exception 2.

More than 150 countries have made marital rape a crime in the world, including the United States, South Africa, and the United Kingdom. The European Court of Human Rights has also recognized that consent should be part of any sexual relationship, whether married or not.⁶²³ India's retention of the exception stands unfairly and embarrassingly alone among democracies committed to gender justice.

IX. Prevalence, Impact & Social Realities

While official crime statistics from India do not classify marital rape, a number of surveys have highlighted the alarming, average national prevalence of marital rape. In the National Family Health Survey-5 (2019–21) for India, it was reported that, as of September 2021, 29.3% of ever-married women aged 18–49 reported having experienced spousal violence, and

⁶¹⁷ 'Government giving in to reactionary ideas' - Frontline. <https://frontline.thehindu.com/cover-story/government-giving-in-to-reactionary-ideas/article8068406.ecce>

⁶¹⁸ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁶¹⁹ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁶²⁰ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

⁶²¹ *State of Maharashtra v. Madhukar Narayan*, (1991) 1 SCC 57.

⁶²² *Ritual Shakti v. Union of India*, W.P. (C) 284/2015, Delhi High Court (2022).

⁶²³ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, U.N. Doc. A/47/38 (1992).

sexual violence was likely a significant subset of this violence. This means that many countries can report the average marital rape experience rate, even if/ when the state does not fashion a legal category of rape for internal use.⁶²⁴ Additionally, in an absence of a legal category of marital rape, the experience can fall outside the legal vocabulary or institutional support framework/action of proof for women to report as rape.

Reports from the International Center for Research on Women (ICRW) also show that a considerable number of Indian women acknowledge being coerced into sexual intercourse by their husbands at least once during their marriage.⁶²⁵ The statistics are higher in rural locations, where male authority is more entrenched, but these societal expectations exist even in urban homes.

Marital rape has long stood in India as rooted in cultural beliefs that regard marriage as a male possession. For example, traditional Hindu law framed marriage within the construct of a sacrament (samskara) in which a wife's consent was subsumed in her obligations as a married woman. This subordination was cemented in law through the exclusion of marital rape in the IPC, legitimizing non-consensual sexual intercourse within marriage.

The social viewpoint frequently regards coercion, such as a husband's marital entitlement. A study by the UNFPA revealed that numerous Indian men perceive sexual access to their wives as a right, and occasionally, women also accept these views.⁶²⁶ This normalization sets up obstacles for survivors who might worry about stigma, disbelief, or potential repercussions when they disclose their experiences.

Consequences of marital rape include far more than physical harm in the immediate sense. The

long-lasting psychological and health repercussions ultimately originate from that immediate harm. Survivors of marital rape often experience post-traumatic stress disorder (PTSD), feelings of shame and depression, and feelings of anxiety and reduced self-esteem.⁶²⁷ Research in the Indian Journal of Psychiatry shows that survivors of marital rape also have an increased likelihood of suicidal ideation and substance abuse as coping.⁶²⁸

From an aspect of health, research has shown that marital rape is associated with higher rates of unintended pregnancy, sexually transmitted infections (STIs), and gynecological problems. Without marital consent for sexual intercourse, women's reproductive autonomy becomes compromised and maternal health risk is increased; especially in situations where a woman's contraceptives have either been withheld or sabotaged by a coercive partner.⁶²⁹

Not all women are affected by marital rape in the same way. Due to systemic discrimination, and poverty, Dalit, Adivasi, and financially disadvantaged women face multiple metastasizing vulnerabilities. Scholars have noted that women from marginalized communities may be unable to escape an abusive marriage due to financial dependence and societal pressures.⁶³⁰

In addition, Muslim women have been part of the discussion on personal law where issues of marriage rights overlap with religious freedom. While personal laws are typically used to push against reforms, the reality is that constitutional principles should take precedence over discrimination, and protect all women regardless of their religion.

The absence of discussion around marital rape is one of the most noticeable truths. A 2014

⁶²⁴ Ministry of Health & Family Welfare, *National Family Health Survey (NFHS-5): 2019–21* (Int'l Inst. for Population Sciences, 2021)

⁶²⁵ Int'l Ctr. for Research on Women, *Sexual Violence Within Marriage in India* (2017).

⁶²⁶ United Nations Population Fund (UNFPA), *Masculinity, Intimate Partner Violence and Son Preference in India* (2014).

⁶²⁷ Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey*, U.S. Dep't of Justice (2000)

⁶²⁸ R.C. Jiloha, *Sexual Violence and Mental Health*, 57(3) *Indian J. Psychiatry* 211 (2015).

⁶²⁹ World Health Org., *Understanding and Addressing Violence Against Women: Sexual Violence* (2012).

⁶³⁰ Flavia Agnes, *Law, Justice and Gender: Family Law and Constitutional Provisions in India* 52(43) *Econ. & Pol. Wkly.* 44 (2017)

article in *Economic & Political Weekly* reveals that women frequently fail to view sex forced on them by their husbands as “rape”; they perceive it instead as something to be performed, as a “duty,” or as a “necessary evil of marriage.”⁶³¹ The state of law reinforces this normative view of forced sex and discourages disclosure and communication about the experience of forced sex by constituting it as an exception in the criminal law, which not only discourages reporting, but suggests that such behavior cannot readily be subject to the law.

Additionally, institutional barriers—such as reluctance by police to file complaints of spousal sexual violence, lack of training among medical staff, and victim-blaming attitudes—further suppress reporting.

The prevalence and effects of marital rape show that it is not an isolated concern of only a few women, but a social issue with significant and broad-ranging actual and potential consequences. Cultural values and legal exemptions silence and render survivors invisible, their suffering untold, and they remain denied justice by a gendered system. So addressing marital rape is not only about reforming criminal law, but about the dismantling of ingrained systems of patriarchy and stigma.

X. Constitutional Analysis & Human Rights Perspective

A. Equality and Non-Discrimination (Articles 14 and 15)

The marital exception in Section 375 IPC infringes on the fundamental right to equality under Article 14 and the prohibition against discrimination contained in Article 15. It creates an insupportable and arbitrary distinction between married and unmarried women that is unsupported by any conceivable valid state objective. Courts have held repeatedly that laws based on patriarchal stereotypes have no place in a constitutional order.

The Supreme Court ruled against a law in *Anuj Garg v. Hotel Ass’n of India*, which legally discriminated on gender grounds and stated that “constitutional rights must be interpreted in the light of prevailing values of equality and dignity.”⁶³² Based on this conclusion, there is no rationale for protecting husbands from prosecution for rape, and protecting husbands for committing rape would not fit modern constitutional values, either as in the restriction of and application of constitutional rights, or the effect of the application of constitutional rights.

B. Right to Life and Personal Liberty (Article 21)

Article 21 provides for the right to life and personal liberty, and has judicially extended to encompass dignity, bodily autonomy, and the right to make decisions. In *Suchita Srivastava v Chandigarh Administration*, the Supreme Court secured the right of a woman to make decisions around reproduction, as an expression of her fundamental rights of dignity and privacy.⁶³³

Non-consensual sexual intercourse within marriage is an affront to this autonomy, causing physical and mental harm to women, and depriving them of autonomy over their own bodies. Privacy was also recognized in *Justice K.S. Puttaswamy v. Union of India*, and, included among many other considerations regarding privacy, must also guarantee an interest in sexual self-determination.⁶³⁴

C. Freedom of Expression and Decisional Autonomy (Article 19)

Article 19 has been overlooked but protects a woman’s choice not to enter into any sexual relations, and to make that choice. If the law denies her the ability to enforce that refusal, the law is taking away her autonomous ability to choose, and to express her autonomy. The Delhi High Court in *Ritual Shakti v. Union of India* (2022), held that coerced sex in marriage is a violation of dignity, but also, a violation of the

⁶³¹ Padma Deosthali & Sangeeta Rege, *Women’s Narratives on Marital Sexual Violence and Law in India*, 49(43) *Econ. & Pol. Wkly.* 66 (2014).

⁶³² *Anuj Garg v. Hotel Ass’n of India*, (2008) 3 SCC 1.

⁶³³ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 SCC 1.

⁶³⁴ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1

woman's freedom of expression under Article 19(1)(a).⁶³⁵

D. Directive Principles of State Policy (DPSPs)

Though not legally binding, the DPSPs convey the Constitution's commitment to social justice and gender equality. Article 39 mandates the State to guarantee equality for men and women, while Article 42 mandates humane conditions of work and maternity relief. A law that permits marital rape is a willful disregard of both Articles and the overall constitutional scheme for a just social order.

E. International Human Rights Framework

India has signed many important international treaties, which require it to criminalize marital rape. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires that states eliminate gender-based violence as a form of discrimination.⁶³⁶ The CEDAW Committee has consistently urged India to eliminate the marital rape exception.

Likewise, the International Covenant on Civil and Political Rights (ICCPR) affirms the right to equality and prohibitions on cruel, inhuman or degrading treatment.⁶³⁷ The United Nations Declaration on the Elimination of Violence Against Women (1993) explicitly identifies marital rape as a form of gender-based violence that must be prohibited by states.⁶³⁸

The litigation related to *Forum for Women, Law & Development v. His Majesty's Government* (2002) saw the Supreme Court of Nepal prohibit marital rape, referencing obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁶³⁹ This provides a contrast, given India's continuous failure to take this step and the evolving human rights standards at the international level.

⁶³⁵ *Ritual Shakti v. Union of India*, W.P. (C) 284/2015, Delhi High Court (2022).

⁶³⁶ Convention on the Elimination of All Forms of Discrimination Against Women art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁶³⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

⁶³⁸ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

⁶³⁹ *Forum for Women, Law & Development v. His Majesty's Gov't*, Supreme Court of Nepal, Writ No. 55 (2002).

F. Judicial Trends Toward Transformative Constitutionalism

The Supreme Court has begun to exhibit a tendency toward transformative constitutionalism in its recent jurisprudence, where the Constitution is read as a living and evolving document, one that seeks to promote social justice. In *Navej Singh Johar v. Union of India*, the Supreme Court decriminalized same-sex relations, and outlined the words dignity, autonomy, and equality, as "core constitutional values."⁶⁴⁰

By parity of reasoning, retaining the marital rape exception contradicts transformative constitutionalism. It fossilizes patriarchal norms into law, denying women equal citizenship and autonomy within marriage. In this way, the non-criminalization of marital rape results in a mismatch between what the Constitution promises and what the positive law is.

XI. Legislative and Policy Reform Debates

A. Law Commission Reports

The issue of marital rape consistently appeared in discussions about law reform in India. For instance, in its Recommendation 172 of the Law Commission of India (2000) the Law Commission recommended the repeal of the marital rape exception and noted that the right of a woman to her bodily autonomy should not yield with marriage.⁶⁴¹ Even so, the fact that this recommendation was never enacted as law illustrated the political reluctance to plainly challenge such deeply entrenched social beliefs.

The Report of the Justice J.S. Verma Committee of 2013, which was established in response to the Delhi gang rape incident, fully supported the criminalization of marital rape. The Report stated, "marriage cannot be a license for sexual violence" (Verma Report).⁶⁴² The Report continued to indicate that the exception to the

⁶⁴⁰ *Navej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁶⁴¹ Law Comm'n of India, *172nd Report on Review of Rape Laws* (2000).

⁶⁴² Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013).

principle of non-consent infringes on the constitutional rights of women and India's obligations under CEDAW. The Indian Parliament, when it passed the Criminal Law (Amendment) Act, 2013 knowingly maintained the exception to the principle of non-consent.

Most recently, the Parliamentary Standing Committee on Home Affairs (2015) rejected criminalization because of the risk of misrepresentation and disruption of family life.⁶⁴³ This reasoning positions the Committee in a contemporary tension between women's rights and traditional notions of family stability.

B. Governmental and Parliamentary Positions

Government responses were generally conservative. In 2015, the Union Minister of Women and Child Development recognized the existence of marital rape, but argued that criminalization was not feasible given India's "social context."⁶⁴⁴ Likewise, in 2016, the government explained in Parliament that marital rape could not be challenged because of the "societal mentality" and the marriage institution.

These positions illustrate a contradiction in policy: the State recognizes harm but, at the same time, privileges the integrity of the male patriarchal family over individual rights. This avoidance is also political—in its reluctance to criminalize marital rape, the State does not want to offend its conservative base.

C. Judicial Recommendations and Pending Litigation

The courts have pushed for legislative reform more and more. In *Independent Thought v. Union of India* (2017), the Supreme Court found the exception for marital rape problematic and attempted to reconcile age-of-consent laws.⁶⁴⁵ The divided ruling by the Delhi High Court in *Ritual Shakti v. Union of India* (2022) sent the question of marital rape directly to the Supreme

Court, where it currently sits awaiting consideration of its constitutionality.

Should the Court strike down the exception, it would parallel transformative decisions like *Navej Singh Johar* and *Joseph Shine*, where progressive judicial action preceded legislative inertia.

D. Policy Concerns: Misuse and Evidentiary Challenges

Critics of criminalization state that marital rape provisions could be misused in disputes regarding marriage or divorce and in divorce custody battles. Yet studies point out that the number of false reports of sexual violence is not statistically greater than for other offenses.⁶⁴⁶ Likewise, similar concerns were expressed when legislation was enacted the last time regarding women being protected from dowry harassment and domestic violence, and provisions were made a part of the laws to protect against misuse.

A further issue concerns evidentiary difficulties in demonstrating lack of consent in the context of continuing spousal relations. Although complex, these issues are not exclusive to the marriage context; courts regularly apply the concept of consent where the relationship is intimate or pre-existing. Solutions do not have to involve a legal immunity concept; legal immunities that excuse behavior, rather than judicial sensitivity and survivor-centric protocols, may be more appropriate solutions instead.

E. Comparative Policy Models

Criminalization can happen in various countries in various ways. For example, in England and Wales, the rule exempting a husband for the crime of marital rape was overruled in *R v. R* (1991). This decision asserts that even in the context of the marital relationship, "consent" is not only relevant but important.⁶⁴⁷ In South Africa, the Sexual Offences Act (2007) formally

⁶⁴³ Dep't-Related Parliamentary Standing Comm. on Home Affairs, *189th Report on the Criminal Law (Amendment) Bill, 2012* (2015)

⁶⁴⁴ Press Trust of India, *India Not Ready to Criminalise Marital Rape: Maneka Gandhi*, Indian Express (Apr. 29, 2015).

⁶⁴⁵ *Independent Thought v. Union of India*, (2017) 10 SCC 800

⁶⁴⁶ Carolyn Hoyle, *Revisiting False Allegations of Rape in the UK*, 17(4) *Violence Against Women* 525 (2011).

⁶⁴⁷ *R v. R*, [1991] 1 All ER 747 (HL).

recognizes marital rape as a matter of criminal law by expressly criminalizing it.⁶⁴⁸ Meanwhile, until the late 20th century, spousal exemptions existed in the United States before the criminalization of marital rape became law in all fifty states.⁶⁴⁹

These contrasting experiences illustrate that the fear of misuse or disintegration of the family unit are overstated, long before or since meeting with, criminalization improves women's rights and brings domestic law in line with constitutional and human rights standards.

F. Civil Remedies and Complementary Measures

In addition to criminalization, reform must also involve civil remedies. The Protection of Women from Domestic Violence, Act 2005 (PWDVA), identifies sexual abuse as a form of domestic violence and provides for the filing of protection orders, right to reside and maintenance. However, the act does not make marital rape a criminal offense.⁶⁵⁰ The combination of criminal sanctions and civil protections is crucial for a comprehensive reform agenda.

Complementary measures should include police training, medical sensitization, and victim support services. Criminal law reform without institutional change risks symbolic progress without substantive relief.

Debates related to legislations and policies have relating to clear opposition to the recognition of marital rape as a crime. While committees, researchers, and international organizations have consistently called for reform in India, inertia in our political and sociocultural context has stunted meaningful change. We find good grounds for reform in evolving jurisprudential trends, comparative international models, and principles of constitutional law. Criminalization, and civil remedies and institutions, presents a promising

and astute avenue for eroding the culture of silence and advancing gender justice in India.

XII. FINDINGS

The study titled Challenging the Silence: Marital Rape and Gender Justice in India illustrates a nuanced and multi-layered picture of how the Indian legal approach to marital rape is struggling to evolve. Although there has been a global shift to criminalise sexual violence within marriage, Indian law affords statutory immunity to husbands through Exception 2 to Section 375 of the Indian Penal Code ("IPC"). The chapter synthesizes the key findings from doctrinal, empirical, constitutional and comparative perspectives.

A. Legal Exemption and, Historical Context

The primary takeaway is that exception to Section 375 IPC still applies. Exception 2 reads: "Sexual intercourse by a man with his wife, the wife not being a minor, is not rape." This exemption has its origins in a colonial statutes law, which also included a patriarchal presumption for the "conjugal right to sexual access." The Supreme Court in *Independent Thought v. Union of India* did read down the marital rape exception on the basis of marital rape not being an exemption when it involved wives aged 15-18 years but a statutory exemption remains for women generally, in marriage, who are adult. The statutory mechanism illustrates the careful mediation engaged with the tensions between utopian notions of a modern constitutional order and anachronistic Victorian morality and reflects the statutory exemption upheld in law.

B. Judicial Stances: Forward Looking but Rigidity Wanted:

There have been instances in which the Indian courts have construed sexual autonomy in progressive ways, but those case-law developments have not engaged meaningfully with each other. In *RIT Foundation v. Union of India*, the differences in the judiciary's positions demonstrates some of the frictions: Whereas Justice Rajiv Shukdhher found marital rape to be

⁶⁴⁸ Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (S. Afr.).

⁶⁴⁹ Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 Calif. L. Rev. 1373 (2000).

⁶⁵⁰ Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005, INDIA CODE.

offensive to the Constitution, Justice C. Hari Shankar found the exception of marital rape to be necessary due to the concerns regarding false allegations and inviolability of marriage. While the Supreme Court hasn't explicitly spoken to the issue of spousal rape being categorized as a crime, implicitly through its judgement in *Puttaswamy v. Union of India* (finding the right of privacy was a right granted by the Constitution) and *Joseph Shine v. Union of India* (overruling legislation on adultery), it may reveal a constitutional approach to spousal sexual autonomy. Accordingly, as yet, the Court has not opted to engage the subject head-on owing to concerns around legislative prerogative.

C. Constitutional Inconsistencies

The marital rape exception essentially violates the constitutional guarantees.

Article 14 (Equality): The exception treats married women differently from unmarried women, and there is no rational nexus for this difference.

Article 21 (Right to Life & Dignity): It contravenes the right to bodily integrity and sexual autonomy, which undermines the right to live with dignity.

Article 15 (Non-discrimination): The immunity is gendered and further entrenches systemic disadvantage against women.

The inconsistency is compounded when read alongside India's obligations under international conventions (for example, CEDAW and the Beijing Declaration, which India signed, all aimed at eliminating gender-based violence).

D. Social Realities: Prevalence and Impact

The National Family Health Survey (NFHS-5) notes that marital rape is a prevalent phenomenon, rather than something that happens in rare instances. More than 1 in 3 married women report some form of sexual violence by their husbands. Underreporting is widespread, which is often due to stigma,

normalized violence, or little attention to legal remedies. The psychological impact, such as trauma and depression, and long-term physical health outcomes are considerable and necessitate legal recognition.

E. Global and comparative perspective

A further important finding, is the world – wide divergence between India and other democracies. Jurisdictions such as the United Kingdom, Canada, and South Africa have struck down the marital rape exemption and rule that consent does not disappear in a marriage. As a result of this position, India is becoming increasingly isolated from a global consensus on human rights, and this diminishes the credibility of India as a constitutional democracy that is adherent to gender justice.

F. Legislative Inaction

The legislative discussions that took place in Parliament after the report of the Justice Verma Committee (2013) reflect a hesitation on the part of the political class to deal with the issue of marital rape. The Justice Verma Committee had recommended that this act be criminalized. However, Parliament rejected the Committee's recommendation. The reasons were twofold: "potential misuse" and the "disruption of the institution of marriage." The legislative inaction is in stark contrast to the judiciary expanding rights slowly in the areas of privacy, equality, and personal liberty. This finding points to the gap between desperately needed societal reform and the political will to act.

G. The Absence of Policy

In addition to the legal framework, there are effectively no institutional policy mechanisms in place to respond to marital rape. For instance, there are no specialized counseling, rehabilitation or protection mechanisms for survivors of marital rape. The absence of policy demonstrates how policy has also been complicit in maintaining the silence surrounding marital rape and continues to center the exclusion of survivors.

H. The convergence of law and culture

The law will not change issues related to marital rape without a concurrent change in the cultural context. The cultural belief regarding the subordination of women as a fundamental premise of marriage facilitates silence related to marital rape. The very existence of a law might shift entrenched norms, similar to how the decriminalization of homosexuality in *Naveej Johar v. Union of India* changed social discourse.

The findings highlight a complex issue comprised of: the immunities provided in colonial law, the ambivalence in the judiciary, legislative inertia and constitutional inconsistency, social invisibility, and global isolation. Overall, the findings demonstrate that the marital rape exemption is indefensible from a legal position, is socially harmful, and perpetuates a cycle of gender injustice.

XIII. SUGGESTIONS AND CONCLUSIONS

The study on *Challenging the Silence: Marital Rape and Gender Justice in India* uncovers an enduring gap between the law and social reality; between constitutional guarantees and the subtle enforcement mechanism rooted in the law. While there is increasing jurisprudence affording women autonomy and international human rights mechanisms are advocating for marriage rape to be criminalized, India's statutory framework continues to offer husbands immunity from rape crimes in marriage. Bridging the gap will require a multi-pronged approach of legal reform, policy initiative, judicial intervention and cultural change. In order to avert misuse of no-fraud complaint and in good faith, options may include survivor-centered reporting mechanisms, similarly strict evidentiary requirements, and mandatory mediation in non-crime scenarios where the rate of false reporting (to ask why new policies are needed) in sexual offenses can be reasonably understood to be quite low.⁶⁵¹ Court reform is

also critical—the expansive need for trauma-informed, fast-track courts with judges trained not to react to the violence, and not to blame the survivor in response to the behavior; and judges in such courts would be provided a guideline adhering to the definition of consent as it is ongoing, revocable, and foundational to all sexual behavior that could be construed as lawful, even in marriage-based examples (such as *R v R* [1991] from United Kingdom jurisprudence.⁶⁵² This demonstrates that fears of upsetting or abusing families have been largely exaggerated and that law reforms, judicial sensitization and policy, culture change and economic empowerment can protect vulnerable, safeguard constitutional values and act in the interest of social justice without harming marriage institutions. All of the legislative, judicial, policy, cultural and international elements ultimately converge to form an integrated structure to address the silence on marital rape, support women's autonomy over their bodies and ensure marriage does not give perpetrators impunity, all with a view to a just, human rights respecting society in India.

In India, marital rape is permissible by law under Exception 2 to Section 375 IPC and is also a widespread social phenomenon that perpetuates gender inequality, systemic injustice, and silence. There are constitutional guarantees of equality and liberty, as well as international human rights obligations to criminalise marital rape. Real reform must be multi-layered. On the legislative front, the marriage exception ought to be repealed, in addition to amending civil legislation like the Protection of Women from Domestic Violence Act, 2005 to guarantee both criminal and civil remedies. On the judicial front, this too requires reform, including fast-track courts, trauma-informed adjudication, and clear legal guidelines treating consent as continuous and revocable, such as those in *R v. R* (UK, 1991). Policy interventions should entail country-

⁶⁵¹ National Crime Records Bureau, *Crime in India 2022* (data on false reporting in sexual offences).

⁶⁵² *R v. R*, [1991] 4 All ER 481 (UK).

wide public education, training for law enforcement and health care personnel, and the combining of legal remedies with reproductive and mental health services. Socio-cultural change is also important: educating for gender equality, working with community and faith leaders, and economic empowerment for women can all be a challenge to patriarchal norms and reduce reliance. Criminalizing marital rape reinforces women's constitutional rights, promotes gender justice, and brings India in line with human rights obligations in the global arena. Beyond legal change, long-term commitment, across law, policy and culture, is required to break the silence around marital rape, and ensure marriage is premised on consent, equality, and dignity, and not coercion and subordination.

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