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## MARITAL RAPE: LEGAL AND SOCIETAL PERSPECTIVES IN INDIA

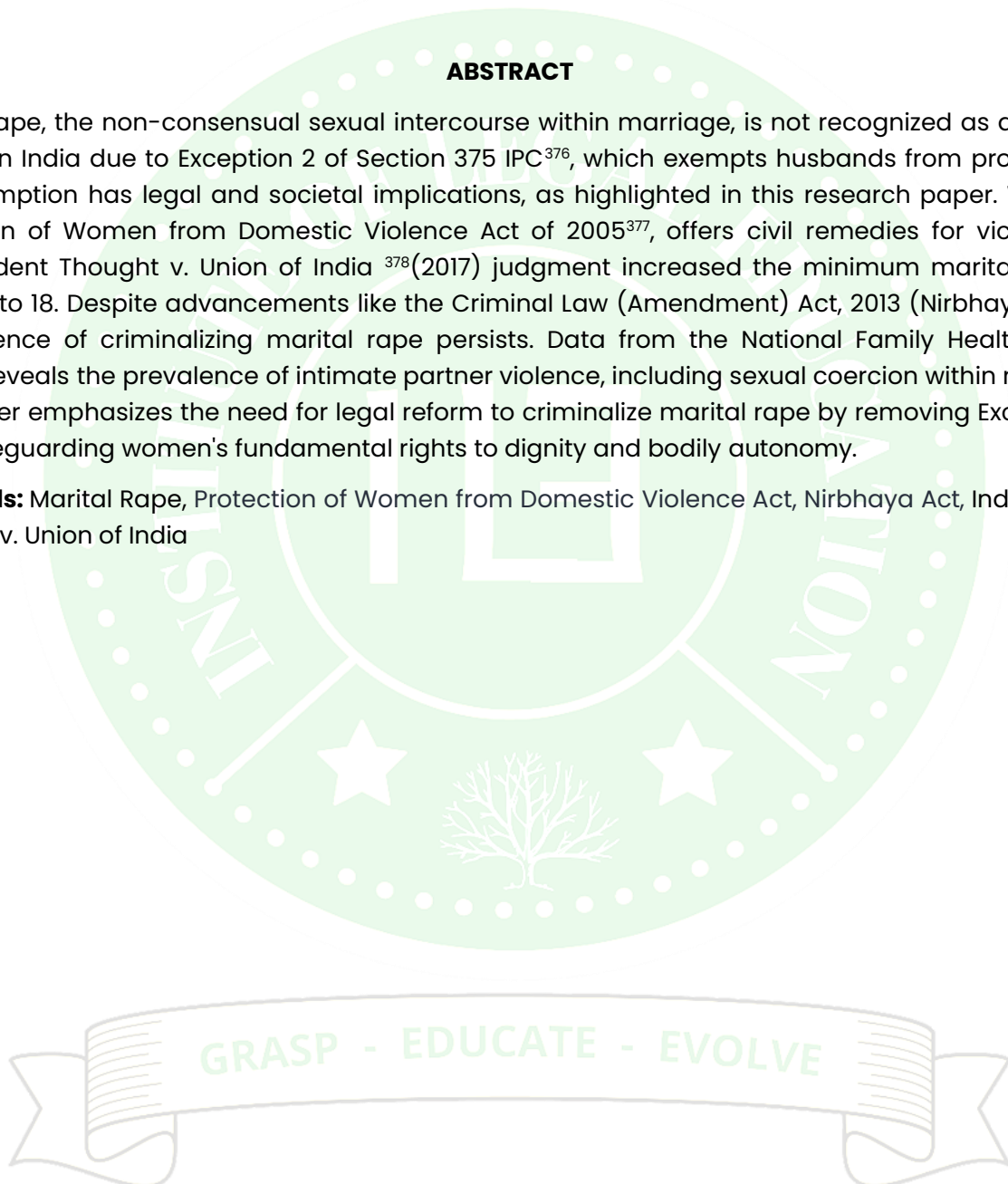
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### ABSTRACT

Marital rape, the non-consensual sexual intercourse within marriage, is not recognized as a criminal offense in India due to Exception 2 of Section 375 IPC<sup>376</sup>, which exempts husbands from prosecution. This exemption has legal and societal implications, as highlighted in this research paper. While the Protection of Women from Domestic Violence Act of 2005<sup>377</sup>, offers civil remedies for victims, the *Independent Thought v. Union of India*<sup>378</sup> (2017) judgment increased the minimum marital age for consent to 18. Despite advancements like the Criminal Law (Amendment) Act, 2013 (Nirbhaya Act)<sup>379</sup>, the absence of criminalizing marital rape persists. Data from the National Family Health Survey (NFHS) reveals the prevalence of intimate partner violence, including sexual coercion within marriage. This paper emphasizes the need for legal reform to criminalize marital rape by removing Exception 2, thus safeguarding women's fundamental rights to dignity and bodily autonomy.

**Keywords:** Marital Rape, Protection of Women from Domestic Violence Act, Nirbhaya Act, *Independent Thought v. Union of India*



<sup>376</sup> Indian Penal Code, 1860, § 375 (India)

<sup>377</sup> Protection of Women from Domestic Violence Act, No. 43 of 2005, India Code (2005)

<sup>378</sup> *Independent Thought v. Union of India & Anr.* (2017) 10 SCC 800

<sup>379</sup> Criminal Law (Amendment) Act, No. 13 of 2013, India Code (2013)

## INTRODUCTION

**“Marriage for a woman is the commonest mode of livelihood, and the total amount of undesired sex endured by women is probably greater than in prostitution.”**

**– Bertrand Russell**

Marital rape, once viewed as a non-issue or even a husband's "right" across many cultures, is increasingly recognized globally as a serious form of domestic violence and a violation of fundamental human rights. This transformation reflects evolving societal understanding that consent cannot be presumed or automatic, even within marriage such an institution that should provide safety and mutual respect, not a shield for coercion. While many nations have enacted laws criminalizing spousal rape, significant gaps remain, with marital rape still legal or unenforced in numerous countries. Addressing this issue requires a dual approach: raising awareness to challenge deeply ingrained myths that normalize sexual coercion within marriage, and providing comprehensive support for survivors through confidential hotlines, shelter services, legal advocacy, trauma-informed counseling, and economic empowerment programs. The journey toward eliminating marital rape is ongoing, but each step toward greater awareness, stronger legal protections, and more compassionate support systems brings us closer to a world where all individuals can expect safety and bodily autonomy in their most intimate relationships.

These programs promote a respectful and consenting culture in relationships, encouraging societies to create environments where all forms of non-consensual behaviour, including within marriages, are firmly opposed. By challenging outdated notions and advocating for individual rights, communities can work toward eliminating the acceptance of sexual coercion that has persisted for generations. Ultimately, these initiatives aim to ensure that everyone is treated with respect and dignity,

regardless of their relationship status, fostering a safer and more equal society for all.

The recognition of marital rape as a human rights violation represents a critical step forward in addressing gender-based violence. This acknowledgment underscores the importance of promoting a society free from all forms of gender-based harm while ensuring that consent remains the foundation of healthy partnerships. By continuing to raise awareness, strengthen legal protections, and provide vital support for survivors, societies can build a future where every individual enjoys bodily autonomy and safety within their most intimate relationships, creating a world where mutual respect and consent define all partnerships.

The fight against marital rape encompasses multiple interconnected strategies. Raising awareness serves as the foundation, educating communities about the reality of sexual coercion within marriage and challenging the dangerous misconception that marriage automatically grants sexual access. Consent must be enthusiastic, ongoing, and freely given in all relationships. It is equally crucial to offer comprehensive support services to survivors, recognizing they face unique barriers since the perpetrator is someone they share a home, children, and emotional bonds with. This requires specialized services including confidential hotlines, safe shelters, legal advocacy, and trauma-informed therapy.

Societies can destroy damaging systems that support marital rape by questioning conventional wisdom that views sexual coercion as acceptable within marriage. Empowering survivors to share their stories helps break the silence that protects abusers. Holding offenders accountable creates consequences that deter future abuse. Together, we can build a future where every person is treated with respect, dignity, and agency, creating a society that fundamentally rejects all forms of sexual coercion.

### Current Status of Marital Rape in India

Marital rape is not a crime in India according to Section 375 of the Indian Penal Code's definition of rape.

**Exception 2 under Section 375 of the Indian Penal Code:** According to this section, a man's sexual relations with his wife do not constitute rape if she is older than eighteen. It is predicated on the idea that all sexual activity within a marriage is consensual (perpetual consent). This exception gives the husband the legal right to have sex with his wife, either with or without her consent.

The *Protection of Women from Domestic Violence Act of 2005 (PWDVA)* represents a significant milestone in India's approach to marital abuse. This landmark legislation defines domestic violence comprehensively, explicitly including marital rape within its scope. However, it is important to note that the **PWDVA is a civil law**, meaning it provides civil remedies rather than criminal prosecution. Only the wife is entitled to seek protection under this Act, making it a limited tool for addressing sexual coercion within marriage. The Act allows wives to seek relief through protection orders, residence orders, monetary relief, and custody orders, but it does not criminalize the act of marital rape itself, leaving a significant gap in the legal framework.

The 2017 case of **Independent India v. Union of India** brought the issue of marital rape into sharper focus when the Supreme Court examined the reasonable bounds of a man's coercion to marry his minor wife under *Exception 2 of Section 375 of the Indian Penal Code*. In a landmark ruling, the Supreme Court raised the minimum age of consent for marriage to eighteen years, recognizing that minors cannot provide meaningful consent to sexual relations. This judgment marked an important step forward in protecting young wives from sexual exploitation. However, the broader issue of marital rape for adult women remains unaddressed, as the exception in Section 375 continues to grant husbands virtual

legal immunity from criminal prosecution for sexual coercion against their wives, creating a fundamental contradiction in India's legal system.

For marital rape, the **Protection of Women from Domestic Violence Act of 2005 (PWDVA) "does not explicitly criminalize marital rape or allow for criminal charges against a husband."** Rather, it focuses on protecting women from different types of domestic violence, such as physical, sexual, emotional, and financial abuse, by offering civil remedies like protection orders, residence rights, and financial relief. While criminalizing certain acts, like marital rape, is the responsibility of other laws, this approach seeks to address the wider range of abuse within domestic relationships and provide legal measures to protect and support victims.

The existing legal system's failure to provide legal protection against marital rape for adult women reflects a worrisome trend of a lack of protection for all those who suffer this trauma in their own secure zones. This issue is further compounded by the substantial disparity between the occurrence of IPV and the lack of legal remedy, as marital rape is not acknowledged for women over the age of 15. Therefore, this issue needs urgent legal reforms to provide overall protection to women against all kinds of marital violence, including sexual violence.

The lack of legal protection against marital rape is a critical issue for women's rights in India, especially when viewed against the backdrop of the alarming statistics provided by the National Family Health Survey (NFHS). According to these statistics, intimate partner violence (IPV) still persists even among empowered women, with 26.21% of these women experiencing this kind of violence. Among these victims, physical violence is the most common, affecting around 60% of victims. Furthermore, the data shows that less empowered women are at a higher risk of experiencing this violence, being 74% more likely to suffer emotional abuse than their

counterparts who are highly empowered. Moreover, the factor of alcohol consumption by the partners also comes up as a major factor, and there is a strong association between the consumption of alcohol and the occurrence of physical, emotional, and sexual violence. This highlights the need for intervention in this area as well. These statistics point to the prevalence of intimate partner violence in India, with a major percentage of the cases involving sexual violence in the context of marriage.

### Judicial Reforms Addressing Marital Rape in India

There have been various acts and guidelines have been enacted globally to address marital rape and sexual offenses. The Protection of Women from Domestic Violence Act (2005) in India recognized marital rape as domestic violence. The Supreme Court has repeatedly called for criminalization of marital rape. International conventions like the **Convention for Elimination of all sorts of Discrimination Against Women (CEDAW)**<sup>380</sup> also guide national legislation on violence against women, promoting consent-based relationships and survivor protection. India has enacted several significant laws to address sexual offenses and protect vulnerable populations such as:

- a. Criminal Law (Amendment) Act, 2013 (Nirbhaya Act)
- b. Protection of Children from Sexual Offences (POCSO) Act, 2012 (POCSO)
- c. Medical Termination of Pregnancy (Amendment) Act, 2021<sup>381</sup>

In the 21st century, several new reforms can be implemented to combat marital rape more effectively. Certain comprehensive legal reforms must explicitly criminalize marital rape in all jurisdictions, closing existing loopholes that exempt spouses from prosecution. There should be specialized training programs which

should be developed for law enforcement, judges, and healthcare providers to ensure sensitive and appropriate handling of such cases. Multiple digital solutions such as secure online reporting platforms and mobile applications can empower survivors to report abuse while maintaining confidentiality. Educational curricula should incorporate mandatory consent education and healthy relationship training from early ages to prevent future abuse. Fast-track specialized courts for sexual offense cases can ensure timely justice delivery. Initiatives for economic empowerment, including vocational training and financial assistance programs can help survivors achieve independence from abusive partners. International cooperation through treaties and mutual legal assistance can pressure countries with weaker laws to reform. Workplace policies offering paid leave and flexible arrangements for survivors can provide crucial support. Perpetrator rehabilitation programs addressing controlling behavior and gender-based violence can prevent recurrence. Finally, robust data collection mechanisms and national surveys on intimate partner violence can inform evidence-based policymaking and ensure accountability in addressing this heinous crime.

### 1. Removal of Marital Rape Exception

The removal of the marital rape exception under Section 375 of the Indian Penal Code is vital in the context of equality before the law. The current scenario, wherein sexual intercourse by the husband with his wife above 18 years of age without consent is not considered rape, undermines the concept of bodily dignity and autonomy. The removal of the exception would acknowledge the fact that marriage does not automatically mean irrevocable consent. This would also bring the Indian legal scenario in line with the provisions of the constitution under Articles 14 and 21 and international human rights laws, thereby ensuring equality for all women.

<sup>380</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>381</sup> Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, India Code (2021).

## 2. **Consent-Based Framework in Marriage**

It is vital to establish a consent-based framework in marriage, which highlights the fact that consent is mandatory in every sexual act, including marriage. This would also help the courts in understanding the scenario in a better manner and would also prevent ambiguity in the matter. Establishing this principle would also shift the focus of the legal scenario from marriage to autonomy and would also highlight the fact that marriage is not just between two individuals but between two equals.

## 3. **Strengthening Victim Support Systems**

The existence of robust victim support systems is very important for the handling of sexual offenses, including marital rape. The victims are often subjected to stigma, are financially dependent, and experience trauma, which discourages them from making reports. The government must ensure the availability of support services for the victims. The support services must also be strengthened, and the victims should have access to such services. The support services should be accessible in both urban and rural areas. The support services will create an enabling environment for the victims to seek justice. The support services will also increase the confidence of the legal system, and the victims will not experience trauma during the judicial process.

## 4. **Judicial and Police Sensitization**

The sensitization of the judicial sector and the police is very important for the handling of sexual offenses. The victims are often subjected to victim-blaming attitudes, which discourage them from making reports. The police should be trained to lodge the complaints in a respectful manner and not in a coercive way. Judges should have a progressive approach to the laws. This will help in the proper implementation of the existing laws and the survivors will be dealt with in a dignified manner, thus

increasing the rate of convictions.

## 5. **Fast-Track Courts for Sexual Offences**

The need of establishing fast-track courts is necessary for speedy justice in sexual offense cases. Delaying trials is not only extending the period of suffering for the survivors but is also making the case weaker and reducing the possibilities of conviction. Fast-track courts can be used to ensure speedy trials for sexual offense cases. Disposing of such cases quickly can also serve as a deterrent for offenders. However, speedy justice must be ensured without compromising its integrity. Proper infrastructure and trained staff must be arranged for speedy and effective justice to be delivered. This can greatly improve its credibility and instill confidence in the survivors that their grievances will be addressed promptly.

## 6. **Harmonization of Personal Laws with Fundamental Rights**

Many Personal laws like the Hindu Marriage Act, 1955 and others also must be harmonized with fundamental rights guaranteed under the Constitution. Personal laws regulate marriage and family relationships but often do not address issues like marital rape. Aligning them with Articles 14, 19<sup>382</sup>, and 21 would ensure that principles of equality, dignity, and personal liberty are upheld. This reform would eliminate inconsistencies between civil and criminal law frameworks and ensure uniform protection for all individuals, irrespective of religion, thereby strengthening the constitutional vision of justice and equality.

## 7. **Awareness and Education Initiatives**

Public awareness and educational programs are the paramount aspects which are needed to change the mindset of the public on the issues of consent and gender equality. In many cases of sexual crimes, like marital

<sup>382</sup> Constitution of India, 1950, art. 19.

rape, the mindset of the perpetrator is rooted in patriarchal values and misunderstandings about marriage. Education in schools, colleges, and the public needs to focus on the issues of respect, consent, and healthy relationships. Media can also be used as an important tool in changing the mindset of the public. Not only are public awareness and education important in preventing crimes, but they are also important in empowering the victims to speak up.

### CONCLUSION

Marital rape is one of the most complex and pressing concerns in the Indian legal framework, reflecting a fundamental conflict between traditional social values and modern constitutional principles. While global jurisprudence is now widely accepting non-consensual sexual intercourse within marriage as a violation of fundamental human rights, India continues to uphold the marital rape exception to this principle within **Section 375 of the Indian Penal Code**, thereby denying legal protection to married women. The rationale for this is based on traditional notions of implied and irrevocable consent within marriage, which is fundamentally at variance with notions of dignity, autonomy, and equality, which find explicit recognition within **Article 14 of the Constitution of India and Article 21 of the Constitution of India**.

The legal position, while providing civil redress through various legislative provisions such as the *Protection of Women from Domestic Violence Act, 2005*, fails to provide for the criminalization of marital rape, thereby reflecting a fundamental gap between legal provisions and actual lived experiences. While judicial pronouncements such as *Independent Thought v. Union of India* have made progressive strides in recognizing rights to married minor women, they fail to address this fundamental concern for married adult women,

The empirical data from the National Family Health Survey (NFHS) reveals alarming prevalence of intimate partner violence across

India, including sexual coercion within marriages. These findings demonstrate that marital rape is not a rare or isolated phenomenon but rather a systemic issue affecting millions of women. The statistics expose the hidden reality behind closed doors, contradicting societal assumptions that such abuse is uncommon.

These conclusive findings demand a fundamental shift in legal perspective - from a traditional marriage-centric approach that prioritizes marital unity to one that centers individual consent and bodily autonomy. The law must recognize that marriage does not negate a woman's right to refuse sexual contact. Legal frameworks need reform to protect women's fundamental rights regardless of their marital status, acknowledging that sexual autonomy is a core component of human dignity that cannot be surrendered at the altar.

The proposed reforms that have been suggested include the abolition of the marital rape exception, development of a consent-based system, strengthening of support systems for victims, judicial sensitization, fast-track courts, harmonization of personal laws, and awareness campaigns. All of these reforms combined create a roadmap for positive change. The proposed reforms are not only legal reforms but are necessary to bring about positive change in society and ensure that marriage is not used to justify crimes.

Thus, to conclude, tackling marital rape in India is not only legally necessary but also morally imperative. Declaring marital rape a criminal offense is necessary to reiterate that consent is an integral and indispensable element of any relationship. Taking a progressive and rights-based approach to tackling marital rape is necessary to ensure that every person, regardless of whether they are married or unmarried, is entitled to dignity, equality, and protection from violence and can lay the foundations for a fair and equitable society.