

The Legal and Social Imperative: Recognizing Marital Rape in India to Secure Women's Fundamental Rights and Individual Autonomy

Name: Prerna Singh


Supervisor: Akshat Mehta

Submission ID: 2885096096



<https://doi.org/10.55041/ijst.v2i5.394>

Cite this Article: Singh, P. & Mehta, A. (2026). The Legal and Social Imperative: Recognizing Marital Rape in India to Secure Women's Fundamental Rights and Individual Autonomy. International Journal of Science, Strategic Management and Technology, 02(05). <https://doi.org/10.55041/ijst.v2i5.394>

License:  This article is published under the Creative Commons Attribution 4.0 International License (CC BY 4.0), permitting use, distribution, and reproduction in any medium, provided the original author(s) and source are properly credited.

1. Abstract

While the country that vehemently acknowledged various women concerns through legislations, the issue of marital rape has been untouched. The need of the hour is criminalisation of marital rape and bringing it in line with international legal standards. Women have been given various rights under the Constitution of India and other statutes, including right to safety and dignity and more than that they have 'individual autonomy' which includes right to decide whether they wish to have sexual intercourse with any person or not. Lack of such legislation brings forth the subjugation of rights of women behind curtains being left with a husband who does forcible sexual intercourse without her will or consent, it becomes an act of deep physical and emotional turmoil for her and is a torture to her.

While the supreme court in *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors.* (2017 SC) has acknowledged that every human being has individual autonomy with respect to his/her bodily integrity. This judgement suggests that such individual autonomy exists even after the marriage. Mere marriage doesn't make a wife the chattel or property of husband. Therefore, such autonomy is extended to wife even after marriage.

This paper highlights the abysmal state of women behind curtains of marriage and the dire need for criminalizing marital rape. The paper highlights how 'individual autonomy' acknowledged by apex court shall be given wide application and how such sexual intercourse or act without consent is a derogation of fundamental right and bodily integrity of a women. It examines the distinction between marital rape and other forms of rape through legal and comparative analysis. The paper also reviews various judicial observations by Indian courts that have shaped the discussion around this issue. Further, this research paper also explores the social and legal dimensions of marital rape, highlighting its causes, types, serious consequences, its validity in India and possible legal and social remedies to address this deeply concerning problem.

2. Literature Review

2.1 Books

"**Marital Rape: The Indian and Global Perspective**" edited by Dr. Manish Dalal and Dr. Raj Kumar (2021) provides a critical analysis of marital rape in comparison to India with other jurisdictions. The book is framed to discuss the sociological context, historical development, legal provisions, judicial ruling, and law reforms on marital rape.

The authors identify the roots of the marital rape exception to the common law principle of "implied consent", an idea firmly embedded in patriarchal systems that understood marriage as a contract of ownership, not a union of equals. According to the doctrine, a wife was said to have given irrevocable consent to sexual intercourse with her husband when she entered the marriage contract. This concept, formulated during 18th- and 19th-century English law, was rationalized on the basis that marriage incorporated the legal personality of the woman with that of her husband, thus making her unable to refuse sexual intercourse within the context of the marital relationship.

"(Marital) Rape and Consent: Exploring Marital Rape in India" engages critically with the language and effect of Section 375 IPC, deconstructing the omission of marital rape from legal definitions of rape. The book delves into constitutional arguments, specifically under Article 14 (right to equality), setting out legal submissions made before the Delhi High Court to strike down the marital rape exception on the basis of unconstitutionality.

The author argues that this exclusion is not so much a legislative oversight but rather a conscious extension of colonial and patriarchal assumptions regarding the nature of the marital relationship. By conceptualizing marriage as a site of automatic consent, the Indian legal system effectively withdraws the right of bodily autonomy from married women, thus perpetuating a hierarchical and gendered power dynamic within the institution of marriage. The book contends that such judicial immunity is contrary to the developing concept of marriage as an equal partnership, a notion being given growing prominence in domestic and international law.

2.2 Articles and Research Papers

Marital Rape in India: A Denial of Constitutional Rights- An Analytical Overview by Kalantry, S., & G. (2015) Their article explores the historical roots of the marital rape exception, dating back to the British common law doctrine of "implied consent" at marriage. This 17th-century doctrine, which was developed by Chief Justice Mathew Hale, held that a wife unconditionally agrees to sexual intercourse with her husband upon marriage. The authors contend that this archaic view is inherently incompatible with contemporary constitutional provisions of individual autonomy and dignity. They carefully show how this. Exception reinforces the concept that women are property of their husbands, thus denying them their personhood and dwindling the marital relationship to a relation of subordination over all else. The article also argues that the exception is a blatant contravention of a woman's right to bodily integrity, a taboo of a just and equitable society.

An Analysis of **Marital Rape from the Perspective of Human Rights and Constitutional Law** – An Analytical Overview by Mahima Yadav, Mukund Kumar Yadav and DR. Santosh Kumar Tiwari. The research paper seeks to study criminalization of marital rape in India with particular reference to constitutional and human rights views expressed in the 2017 Independent Thought case.

The researcher aims to unveil an analogy of the remedy given in the independent thinking case for curtailing marital rape on the girl child on the touchstone of constitutional human rights provisions, and the same philosophy of human rights-based approach should be adopted to solve and give a clear express legal framework for criminalisation of marital rape in India on married women.

The grim reality of marital rape in India - An Analytical Overview by Harshit Sharma and Prashant Babbar. Judicial activism can only take us so far without the legislative bodies being actively involved and discussed in the legislation. The fears of the Government, although not quite irrational, cost us so much more dearly — the safety and freedom of a woman over her own body within her own home. This kind of judgements serves to be an ever-present reminder of how much further we still have to progress in order to give women their fundamental human right over their bodies, guaranteed in our very own Constitution, namely Articles 14 and 21, which guarantee equality and the right to life with dignity to citizens.

With over 100 nations, including Britain, criminalizing this exemption, it is time that India considers and abolishes the draconian practice of marital rape exemption. With all urgency, there is a need for legislation to come forward with steps to weigh the interest of society and also ensure women are not victims of sexual offence in the name of "institution of marriage" which they are so eager to defend.

2.3 Journals

Nandani, Riya and Nandani, Riya, **Marital Rape in India** published by The SSRN 2025. Situated at the centre of the current debates on gender justice, bodily autonomy, and the changing understanding of basic rights under the Constitution of India, this study attempts to bridge the gap between doctrinal constitutional rhetoric and judicial pragmatism by using a doctrinal-cum-analytical research approach.

The article is a meta-analysis of India's law on sexual violence in marriage and is also a reflection on the judicial reluctance and legislative complacency that perpetuate the marital rape exception in Section 375 of the Indian Penal Code (IPC). It is unique compared to previous works inasmuch as it incorporates constitutional theory, statutory interpretation, and comparative legal analysis.

Ms. Muskan Sharma, Dr. Sonia Rajoria **Marital Rape Status in India** Volume 7, Issue 2, March-April 2025. The major

aim of the study is to follow the development of the rights of women in Indian law, evaluate the sufficiency of the current laws on rape, and outline the differences between provisions on general rape and those on marital situations.

The article carefully analyses legislative documents, judicial pronouncements, and constitutional provisions to highlight inherent shortcomings in existing matrimonial and criminal legal provisions which do not effectively address marital rape. The author contends that even with liberal constitutional assurances under Articles 14, 19(1)(a), and 21, the legal system reinforces discrimination by continuing the marital rape exception clause in Section 375 of the Indian Penal Code.

2.4 Thesis

The scholarly thesis "**A Critical Examination of the Criminalization of Marital Rape in India**" (2023), accessible via the DiVA Portal, is a serious and multidisciplinary work on one of the most contentious and contentious domains of Indian criminal law. The author embarks upon a detailed exploration of the basis for the continuing non-criminalization of marital rape in India, in the face of changing constitutional interpretations, international human rights commitments, and altered socio-cultural equations. Through an in-depth analysis of statutory schemes, constitutional provisions, and comparative law structures, the thesis lays bare the intrinsic contradictions between the Indian Penal Code's Exception 2 to Section 375 and the basic assurances contained under Articles 14 and 21 of the Indian Constitution.

3. Introduction

3.1 Background and Context of Marital Rape in India

The ongoing debate in Indian Criminal Law primarily centres around the treatment and classification of sexual violence against a spouse (within a Marriage), in relation to the definition of Rape. Rape, according to Indian law, is one of the most serious violations to Body, Freedom and Dignity; however, because sexual violence between a husband and wife is not identified in Section 375 of the Indian Penal Code, 1860, it continues to highlight the conflicting values that Constitutional Law represents and the traditional societal attitudes towards Women. The Indian Penal Code defines Rape as a Crime and does not allow for any Criminal Liability for Husbands having sexual relations with their wives over the age of 18; therefore, there is no distinction in accordance with Sexual Autonomy whether a Woman is Married, Union or Unmarried. The legal authority of Exception 2 of Section 375 of the IPC was created under a Colonial Common Law, which viewed Marriage as an Indefensible Consent to engage in Sexual Relations. The current understanding of Indefensible Consent versus the value of Equality, Fair Consent and Individual Dignity has become increasingly incongruous.

3.2 Statement of the Problem

This research focuses on fundamental inconsistencies in the interpretation of Indian Criminal Law as it relates to the exemption of rape in marriage. The Constitution of India guarantees individuals equal legal standing under Article 14 and protects the right to live free from harm and enjoy their personal liberty as detailed in Article 21. The exemption of marital rape, however, is based on an arbitrary distinction between married and unmarried women and fails to protect a married woman's right to bodily autonomy, dignity, and her right to consent, all vital elements for interpreting the Constitution.

The question of marital rape has had a mixed and rather limited response from the judiciary in India. For instance, a partial blow to this exception with regards to marital rape occurred when the Supreme Court of India in the case of *Independent Thought v. Union of India* held that a husband can be prosecuted for sexual assault in circumstances where he engages in intercourse with a wife under 18 years of age, since a marriage does not offer a historical rationale for sexual violence/abuse of a minor wife. However, the Supreme Court did not declare that the exception in the case of women above 18 years of age in marital rape is unconstitutional. Moreover, it can be noted that the matter in question has already been dealt with by the High Courts of Delhi in two separate decisions. The views in both decisions are opposing, and they raise concerns about a lack of clarity in this matter.

3.3 Research Questions and Objectives

This study intends to address these questions:

- Is the exclusion of marital rape in Section 375 of the Indian Penal Code in line with Articles 14, 15 and 21 of the Constitution of India, the Fundamental Rights guaranteed therein?
- Can it be justified given the social stability, fear of misuse or preservation of marriage?
- How the evolution of judicially defined concepts of autonomy, dignity and privacy will affect our understanding of what constitutes consent within marriage.

3.4 Research Methodology

The methodology used in the research is doctrinal and analytical in nature. The primary sources of this research include constitutional provisions, statutes, decisions of the Supreme Court and High Courts, and Parliamentary Debates.

A comparative method will be used to consider what Other Jurisdictions do about Marital Rape, especially Common Law Jurisdictions. Judicial Reasoning is used to demonstrate how the Constitution's Doctrines of Privacy, Autonomy, and Dignity have changed over time in the context of Indian Criminal Law, and what implications this has for the development of Criminal Law on Marital Rape in India.

3.5 Scope and Limitations

The laws in India pertaining to marital rape and the possible effects they have from a constitutional viewpoint are all that this research will examine. While this research will address social and cultural elements which come into consideration within the discourse of marital rape, this research will not include an empirical sociological analysis concerning marital violence. Only heteronormative marriage, as this term will be explained in accordance with current criminal laws in India, will be considered in this analysis because of the fact that, under the definition in Section 375 of the Indian Penal Code, gender is a specifying factor in a sexually committed offense. While this research contains these aforementioned caveats, this research will make a thorough analysis of this topic with a consideration towards contributing towards a broader discourse in gender justice.

4. Conceptual Framework: Consent, Autonomy, and Marriage

4.1 Meaning of Consent in Criminal Law

Consent is central in criminal law, particularly in offences involving bodily and sexual integrity. Consent in Indian criminal jurisprudence is the conscious, voluntary, and informed agreement to participate in a particular act and not the absence of resistance. Section 375 of the Indian Penal Code defines consent as "unequivocal voluntary agreement" and explains further that this has to be a consent free from fear, coercion, misconception, or undue influence. The courts have continuously interpreted that the submission that is obtained under compulsion cannot amount to consent. In *State of H.P. v. Mango Ram*, the Supreme Court held that consent requires an active exercise of will and passive acquiescence cannot meet the requirement.

Recently, there has been a growing recognition of a rights-oriented approach to consent in judicial circles, which considers consent an 'exercise of personal autonomy.' In *Kaini Rajan v. State of Kerala*, the honourable Supreme Court explained consent as a 'reasoned choice with awareness of the consequences of an act.' Such an approach brings consent within the realm of decisional autonomy and therefore relates it to constitutional rights under Art. 21. Nevertheless, this sophisticated perception of consent hasn't been duly incorporated in consensual relationships, where consent remains presumed implicitly and perpetually under criminal law.

4.2 Bodily Integrity and Sexual Autonomy

Bodily integrity is a basic tenet of modern constitutional democracies and is an integral part of the right to life and personal liberty. The Supreme Court has time and again reiterated that individual autonomy over the body, including choices regarding sexuality and intimacy, constitutes the bedrock of human dignity. In *Justice K.S. Puttaswamy v. Union of India*, the Court categorically identified bodily integrity as falling within the ambit of privacy, observing that any invasion by the State within the private domain of an individual's body must have a justifying reason.

Sexual autonomy, which can be considered an element of bodily integrity, thus involves a right to make autonomous decisions in matters of sexuality, including consent and refusal. However, this right assumed significance in light of the *Navtej Singh Johar V. Union of India*, in which the court held that constitutional morality demands respect for individual

choice in matters of intimacy. With this understanding in consideration, it can be noted that the marital rape exception is problematic in light of this right because it gives married women no right to refuse sexual intercourse.

Thus, this immunity granted to husbands in criminal law leads to a bodily right hierarchy, wherein a woman's autonomy is subject to her being a wife. Such a distinction is very hard to accommodate in light of constitutional precedents, wherein dignity and bodily integrity are not negotiable but universal rights.

4.3 Marriage as an Institution and Gendered Power Relations

In India, marriage has conventionally been considered not only a private or personal agreement but a social institution, which is based on tradition, religion, and patriarchal ideology. As such, this social institution has conventionally accorded more importance to the preservation of unity in marriage rather than individual rights, especially in relation to the rights of women. The exemption given to marriage through the law of marital rape is a product of this approach.

Feminist literature on law underlines marriage as a space wherein imbalances of power are produced through economic dependency, socialization, and cultural factors that impede a woman's claim to autonomy. The judiciary is slowly catching up with these realities. In *Joseph Shine Versus Union of India*, in decriminalizing adultery, the Supreme Court observed how making a woman a mere passive subject in marriage perpetuates patriarchal domination over her in terms of constitutional equality. The bench signalled a transition towards marriage being a relationship where equal status is given, rather than a relationship based on domination and control.

5. Historical Evolution of the Marital Rape Exemption

5.1 Common Law Origins of the Marital Rape Exception

"The historical roots of the marriage rape defence can be traced to English common law and were most extensively stated in the seventeenth century by Sir Matthew Hale. Sir Matthew Hale had argued: 'By marrying, the wife hath given her irrevocable consent to her husband, to all such acts of cozenage in each other, as in law are not punishable...and her consent in all other matters, which were not in law contrary to the law of God,' including sexual relations with her husband. "This attitude broadly reflected the idea of a unity of personality in marriage, where, in effect, the wife's personality was absorbed into her husband's. The consequence of such a unity of personality is that the possibility of rape in marriage will become an impossibility in law, not because there will not be force used, but because consent will be presumed in law."

The decisive shift came in *R v. The House of Lords* made this judgment quite clear in (1991), in effect, the marital rape exemption was declared dead in England and provided a powerful precedent in other common law jurisdictions. The reasoning in *R v. R* highlighted that marriage does not deny a woman a right to bodily integrity and consent should be given when the sexual act is performed.

5.2 Colonial Incorporation into Indian Penal Law

The marital rape exemption of English common law was adopted virtually word-for-word in the Indian Penal Code of 1860, which was enacted during the British colonial rule. Section 375 IPC was a very general definition of rape, but explicitly excluded sexual intercourse between a husband and his wife, so long as she was above a given age. This importation aimed at the priorities of the colonists, not the indigenous law: it imported into Indian criminal law the Victorian concepts of marriage, sexuality, and female subordination.

The age limit that was attached to the exception varied over time, showing lack of care about child marriages as opposed to acknowledgement of sexual independence of women. The exemption was never based on constitutional or moral justification, but on utilitarian considerations, including the maintenance of marital peace and the perceived abuse of criminal law. These grounds were not often subject to questioning, even as the general criminal law increasingly responded to the challenge of sexual violence.

5.3 Post-Independence Retention and Legislative Silence

Following the independence, the Indian law was changed by the Constitution of India which ensured equality, non-discrimination, and individual freedom. This constitutional change did not see the marital rape exemption subject to serious legislative review. The issue was largely evaded in the process of parliamentary reform of criminal law, often through the appeal to social sensibilities and perceived inviolability of marriage.

The judicial involvement during the post-independence has been reserved. Courts never raised questions about the constitutional validity of the exception over the decades as it was a matter of legislative judgment. Incomplete abandonment of this method was had in Profile of *Independent Thought v. In Union of India*, where the Supreme Court declared that sexual intercourse with a wife under the age of eighteen years is rape, notwithstanding that the marriage existed. The Court saw no necessity to uphold marriage in the legitimisation of sexual violence against children below the age of eighteen years and so read down the Exception 2 accordingly. It however did not go further and answer the greater question of adult marital rape.

The silence of the legislature was further continued even when constitutional developments took place like the *Justice K.S. Puttaswamy v. Union of India*, has stepped up its investigation of the exemption. The latest controversy of its treatment of the Delhi High Court and the ensuing review of the Supreme Court suggests that the growing recognition that the marital rape exemption may not be consistent with the constitutional protection of equality and dignity.

6. Statutory Framework Governing Sexual Offences in India

6.1 Section 375 IPC and the Marital Rape Exception

The offence of rape is defined in Section 375 of Indian Penal Code, 1860 (“IPC) which specifies the conditions under which sexual activity is criminal behaviour. That provision, following its extensive amendment in 2013, takes a consent-based approach, as the new definition is much broader, recognising that non-consensual sexual intercourse constitutes rape. Even with this progressive statement, Exception 2 in Section 375 goes far beyond this by establishing a separate legal status in which by a man is not culpable of rape even when there is, or is lacking, consent, so long as the sexual intercourse or acts occur between a man and his own wife, and she is not under the age of eighteen years. The consequence of such a provision is to assume that marriage is the legally adequate ground to assume permission when the setting of facts may indicate coercion or force. The judicial review of this exception has been sparse yet eye opening.

6.2 Criminal Law Amendments and Their Limitations

The rape law in India has experienced a number of amendments, the latest being the Criminal Law, (Amendment) Act, 2013 after the 2012 Delhi gang rape. The amendments broadened the definition of rape, gender-sensitive procedures, and increased punishments on sexual offences, the intellectual foundation of which was the Justice Verma Committee, the report of which made it clear that, marriage cannot be interpreted as an irrevocable agreement to sex. Although such a recommendation is evident, the legislature decided to preserve Exception 2 to Section 375. During Parliamentary discussion in the enactment of the 2013 Amendment, apprehensions surrounding the possible misuse of the criminal law, interference with the family harmony, and the sanctity of the institution of marriage were put before the table, but they were not supported by empirical research that would prove that criminalisation would upset the family structure and the abuse would not be particular to marital rape as compared to other sex offences. Later amendments such as the Criminal Law (Amendment) Act, 2018, which introduced more severe penalties on rape of a minor, did not clear the situation either: even though the law has increasingly promoted the protection against sexual crimes, it has also promoted the exception to the principle of equal protection. The maintenance of the marital rape exemption is therefore a legislative restriction that is somewhat based on social fear rather than constitutional argument.

6.3 Protection of Women from Domestic Violence Act, 2005 and Civil Remedies Without criminalisation, sexual violence in marriage is treated indirectly by civil law solutions, which are mainly under Protection of Women from Domestic Violence Act, 2005

(“PWDVA”). The Act has a very wide definition of domestic violence and includes sexual

abuse in the category of civil reliefs, which are protection orders, residence orders, monetary relief, and compensation, demonstrating the acknowledgment that sexual coercion may also take place in domestic relations. Although the PWDVA is a significant legislative recognition of the existence of marital sexual abuse, its remedial structure is essentially civil in nature. The Act does not criminalise rape in marriage or place any similar penal effects to rape like the IPC. Courts have more than once concluded that the remedies provided in the PWDVA are preventive and compensatory and not punitive. Consequently, the Act cannot be seen as a commendable alternative to criminal prosecution in instances of serious sexual violence.

7. Constitutional Dimensions of Marital Rape

7.1 Article 14: Equality and Arbitrariness

Article 14 of the Constitution guarantees equal protection of the laws and equality before the law. Any legislative classification must meet the two tests of reasonable classification: there must be a clear difference and a logical connection between the classification and the goal that is being sought. The marital rape exemption makes a clear distinction between married and unmarried women, meaning that married women are not protected from rape just because they are married. Such categorization does not withstand constitutional scrutiny. The purpose of the rape law is to defend the person's body, sexual freedom and dignity. Marital status bears no rational nexus to this end. Sexual violence causes the same damage whether or not the perpetrator and the victim are related. The law is a breach of the substantive equality principle by discriminating acts of the victims in similar situations by propping up the husband to escape from penal provisions.

Additionally, the exemption is susceptible to contestation based on manifest arbitrariness, a principle acknowledged by the Supreme Court in *Shayara Bano v. Union of India*. A provision is arbitrary if it is unreasonable, random, or lacks a clear guiding principle. The exemption for marital rape, based on old ideas of implied consent and marital unity, has no constitutional basis in today's world.

7.2 Article 15: Gender Discrimination and State Obligation

Article 15 states that no one shall be discriminated against on grounds of "sex" and authorizes the State to make special provisions for women. Marital rape exemption impacts women more as Section 375 IPC treats only women as victims of rape and exemption is a form of indirect sex discrimination as it fails to safeguard women from sexual violence in one of the most perilous sites, their own homes.

Repeatedly the Supreme Court has declared that legislation that preserves gender stereotypes or reinforces patriarchal values is discriminatory on grounds of sex and is therefore unlawful under Article 15. The Court mentioned in *Anuj Garg v. Hotel Association of India* does not condone gender discrimination on the basis of weakness. Legal equality involves the dismantling of gender stereotypes, not their reinforcement. The exemption for spousal rape is based on exactly the same stereotypes: that marriage involves sexual availability and that a woman's consent within marriage is subordinate to the marriage itself. Article 15(3) gives a permission to the State to enact special provisions for women but it cannot be utilized as a ground for the deprivation of protection. The State's ill-treatment of women through the lack of protection is evidenced by the fact that it refuses to criminalize marital rape, although it has been unequivocally recommended by expert committees and an increasing number of judges are acknowledging women's rights.

7.3 Article 19: Personal Liberty within Marriage

Article 19 secures the most basic freedoms to the people such as the freedom of speech and the right to make personal choices. Even though it has been conventionally linked with public freedoms, Article 19 has been understood as a provision that shields freedom of decision and recognizes the individual's power to act. Marriage is not a matter of taking away these freedoms; it is a bond where people's rights under the constitution are still valid.

By his decision in the *Shafin Jahan v. Asokan K.M.* case, the Supreme Court recognized that the choice of partner for life is the essence of individual freedom and it is not possible for the society or the family to limit this freedom. As per this argument, namely that the court recognizes marriage as a place of choice and agreement rather than that of force. Any sexual intercourse which is forced upon one of the parties in a marriage is a violation of personal liberty and thus the agency of that one spouse is reduced to a legal fiction.

7.4 Article 21: Dignity, Privacy, and Bodily Autonomy

Article 21 has been the most significant constitutional provision in the discussion of the marital rape issue. The Supreme Court has, on several occasions, held that the right to life and personal liberty under this Article include dignity, privacy, bodily integrity, and decisional autonomy. In the landmark case of *Justice K.S. Puttaswamy v. Union of India*, the Court accorded privacy as one of the characteristics of human dignity and held that personal autonomy goes far as to intimate decisions of the body. The reading down of the marital rape exemption partially in *Independent Thought v. Union of India* shows the acknowledgment by the judiciary that marriage should not be allowed to supersede bodily integrity, at least in

cases involving minors. The reasoning in that case - based on the concepts of dignity, autonomy, and constitutional supremacy can, without any modification, be applied to adult women. Hence, the remaining existence of the exemption is a constitutional inconsistency that is at odds with the transformative vision of the Constitution.

8. Judicial Approach to Marital Rape in India

The Indian courts' handling of the problem of spousal rape has been staggered over time with very little judicial intervention, timid step-by-step changes, and lately, open constitutional disputes. In the past, the courts have been reluctant to interfere and have left the matter to the legislature, but the new constitutional law principles regarding the right to dignity, personal autonomy, and equality have made the courts more active.

8.1 Early Judicial Silence and Deference

For a few decades after independence, Indian courts did not actively challenge the exemption of marital rape in the law. The courts' decision-making during this time considered the exception in Section 375 IPC as a choice made by the legislature which was final and not open to review by the constitution. The courts on several occasions referred to the marriage being a sacred entity and the necessity of preserving peace at home thereby indirectly agreeing to the notion that sex in the marriage is a matter of privacy that cannot be interfered with by the criminal law.

Such judicial silence should be interpreted in the frame of the post-colonial criminal jurisprudence, whereby the courts are normally hesitant to question the legislature's decisions regarding family law and personal relationships. The marital rape exemption hardly received any attention even when constitutional jurisprudence on equality and liberty was developed. Unlike the provisions relating to dowry, cruelty, or domestic violence that were progressively subjected to judicial scrutiny, the issue of marital rape was considered as one of non-justiciability and therefore left to the Parliament.

Moreover, the unwillingness to deal with the issue of marital rape was supported by worries about the difficulty of evidence and possible wrongful use of criminal law. Nevertheless, the courts seldom put these worries under strict constitutional scrutiny and thus, they give a green light for the continuation of the exemption without being interrogated by the judiciary.

8.2 Independent Thought v. Union of India and Conflicting High Court Judgments

With the Supreme Court's decision in *Independent Thought v. Union of India*, a major change was brought about. The case challenged the constitutionality of the Exception 2 to Section 375 IPC as it allowed sexual intercourse with a wife aged between 15 and 18 years. The Court found that the exception, to that extent, infringed the rights under Articles 14, 15, and 21 of the Constitution and thus raised the age of consent in marriage to 18 years by reading it down. While doing that, the Court admitted that no one can give the right to rape a child and, therefore, the minor's bodily integrity and dignity cannot be made subordinate to the status of marriage. However, the Court did not go beyond making this point and it emphatically restricted the application of its ruling by saying that the issue of marital rape involving adult women was not before it. The restraint that the Court imposed on itself was a recognition that the legislature still had the final say even though the Court's argument was based on the principles of dignity, autonomy, and constitutional supremacy which are not limited to the facts of the case.

9. Marital Rape as a Violation of Women's Fundamental Rights

The impact of the offense of marital rape is several layers deep: physical, psychological, reproductive, and societal. Thus, it is a serious violation of the constitution.

9.1 Impact on Physical and Mental Health

Marital rape damages women's health, both the physical and the mental, and the effects of such damage last for a very long time. On top of it all, survivors are very likely to suffer chronic pain, sexually transmitted infections, and unwanted pregnancies, as well as gynaecological problems; a long list of medical issues is also accompanied by mental scars in the shape of depression, anxiety, and post-traumatic stress disorder. In most cases of sexual violence, the abuser is a stranger, while in the case of marital rape, the aggressor is usually the victim's husband, so such a kind of violence is very often repetitive, happening in an environment where the victim is not likely to receive social and legal help. As a result, the damage caused by it is very much intensified.

9.2 Reproductive Choice and Sexual Agency

Reproductive autonomy and sexual agency are among the most important aspects of women's constitutional freedoms. The freedom to make the decision whether, when, and under what conditions to have sexual relations is, without any doubt, part of the right to reproductive life. The Supreme Court has on numerous occasions upheld that the right to choose reproductive measures is a part of personal liberty as per Article 21. In such a case as *Srivastava v. Chandigarh Administration* the Court identified that the right of a woman to decide her reproduction is a facet of personal autonomy.

Marital rape is a direct attack on this autonomy as it forcibly enables sexual intercourse, which in turn may lead to unwanted pregnancies. The Court, in *Devika Biswas v. Union of India*, has recognised that the right to reproduction is inclusive of the right to be free from coercion and violence. By the mere presumption of consent in marriage, thus, the marital rape exemption obliterates women's sexual agency and makes reproductive choice a mere legal fiction.

Therefore, the refusal to grant protection against marital rape under the criminal law is going on in the Court's recognition of women not as inactive characters of the marriage but as autonomous constitutional subjects.

9.3 Intersectional Dimensions of Harm

Not all are affected in the same way by one-sidedly forced sex within marriage that is the cause of major harm. For instance, women's susceptibility to the problem is often influenced by their being the intersection of such aspects as caste, class, having disabilities, living in the countryside, and being financially dependent. Trapped in the repetition of a cycle, girls and women from underprivileged areas, besides facing the difficulties of lodging a complaint, also find it extremely hard to receive medical care and legal assistance. Hence, for them, the excuse for marital rape is not just adding to their existing inequality, but rather taking away the option of even the slightest possibility of the intervention of criminal justice.

Besides, the top court has already admitted that considering gender identity and being aware of other factors are vital to understanding discrimination and suffering. In *Navtej Singh Johar*

v. Union of India case, the court declared that constitutional rights should be seen and understood with the awareness of structural instability and people's real-life situations.

On top of that, spouses with disabilities are more likely than others to get sexually abused by their husbands, and in most cases, no one recognises the abuse, hence, the spouses also lack support and solutions for the problem in the legal field.

10. Social and Policy Barriers to Criminalization

Notwithstanding the increase in conversations relating to constitutional and human rights advocating the criminalisation of marital rape, there is still a considerable number of social and policy obstacles that hinder the change of the law regarding this matter in India. These obstacles stem not only from the law side but are still very much influenced by patriarchal norms, the culture-based understanding of marriage and the worries about the law enforcement sector that are deeply ingrained in the society.

10.1 Patriarchy, Misuse Concerns, and Cultural Resistance

One of the major reasons that stand in the way of making marital rape a crime is the patriarchal view of marriage as a sacramental and hierarchical institution, which generally presumes that a wife's sexual participation is a marital duty. This perspective, which is deeply rooted in social practice and is supported by customary norms, considers consent as something that is given implicitly and irrevocably upon marriage. These kinds of assumptions deprive the recognition of women as independent human beings who have the right to say no to sexual relations within marriage.

Another excuse used for not criminalising marital rape is the fear of the law being misused. Opponents of Section 498A IPC put forward similar arguments, though the Supreme Court has clarified on numerous occasions that the possibility of misuse is not a valid reason for denial of legal protection against real harm. The Court in *Rajesh Sharma v. State of Uttar Pradesh*, while referring to misuse concerns, declared that the legislature should not use them as an excuse to take away the rights of individuals. Taking a cue from this, the court anxiety over false accusations cannot legally be used to deny women in marriage the right to seek justice when they are sexually abused.

Resistance to the culture aspect of the problem is also shown in the manner the society stigmatizes those who report the abuse they suffer in their marriages. Women are discouraged to take the legal way mostly for fear of social rejection,

economic dependence, and the pressure of wanting to keep the matrimonial relationships. These constraints imposed by society implicitly though strongly work as inhibitors against breaking the silence thereby rendering the victims of marital rape invisible.

10.2 Challenges in Enforcement and Evidence

Another key area of the government's concern about the issue is the enforcement aspect and the problems with evidence when it comes to prosecuting marital rape. Opponents claim that even if the sexual offences are committed within the marriage, it is hard to prove them because the acts are private and there are no witnesses. Nevertheless, this problem is not only related to marital rape but to other sexual offences as well. The criminal justice system often uses circumstantial evidence, medical testimony, and survivor testimony, which courts consider to be sufficient if they are credible. The Supreme Court has in a number of cases ruled that if the rape survivor's testimony is reliable then it does not need any corroboration. In *State of Punjab*

v. Gurmit Singh the Court pointed out that the demand for corroboration indicates a misconception of sexual violence and an unfair way of putting the burden on survivors. Therefore, resorting to the exclusion of marital rape from criminal law due to lack of evidence means that a discriminatory standard is being imposed, i.e., higher levels of proof are required only in the situation of married women. The problems with enforcing the law have been associated with institutional issues such as insufficient police training, lack of gender-sensitive investigation, and the presence of societal biases in law enforcement officials. However, the absence of these features shows that instead of being exempt from law, there is a need for thorough reform of the system. The Protection of Women from Domestic Violence Act 2005 is an example of how the legal system is already involved in cases of violence in the family, thus the argument that criminal law is not appropriate for regulating marital relations is getting weaker.

To sum up, the arguments about the difficulties in enforcement of the law reflect the limits of the administration and institutions rather than the impossibility of the constitution. The use of these problems as a reason for the continuation of legal immunity for marital rape is to put the blame for the systemic failure on the survivors, thus perpetuating the injustice under the name of pragmatism.

11. Conclusion and the Way Forward

The inquiry of marital rape in India is an intersection point of constitutional morality, criminal justice, and social norms that have been deeply rooted for a long time. This study has looked at the problem from doctrinal, constitutional, and socio-legal perspectives, and has shown that the legal exemption of marital rape, which has been tolerated for a long time, is less and less in line with the India's constitutional requirements of equality, dignity, and individual freedom.

11.1 Summary of Findings

This study concludes that the exemption for marital rape in Section 375 of the Indian Penal Code is a stigmatic refusal of a woman's basic rights by the structures of the society. The exemption, which is based on colonial common law ideas of marital unity, has been kept alive although there were significant changes in the constitutional laws recognizing women as independent individuals with rights. The courts have recognised that issues of privacy, dignity, and sexual autonomy, especially in the cases of *Justice K.S. Puttaswamy v. Union of India* and *Joseph Shine v. Union of India*, do not support the idea that marriage constitutes a sphere that is immune to constitutional scrutiny.

The study of the matter also shows that marital rape causes a variety of severe physical, psychological, and reproductive problems and, therefore, women who are economically and socially marginalized suffer the most. The existence of the exemption means not only that the perpetrator cannot be brought to justice but also that stereotypical patriarchal assumptions, which view women's consent as being derived from their marital status, are still dominant. Although courts have started to recognize these issues, as evidenced by the case of *Independent Thought v. Union of India*, the judicial response has been very cautious and fragmented, thus the main issue remains unsettled.

The findings, in general, point to the increasing difference between the constitutional principles and the statutory criminal law. The Constitution guarantees the right to bodily integrity and personal liberty; however, the criminal law still allows sexual offenses committed without consent in a marital relationship, thus making the criminal law internally inconsistent with the Constitution.

11.2 Need for Legislative Reform

The continuation of the exemption for marital rape demonstrates that there is a pressing need for changes to be made in the law. Relying on court decisions alone to change the law might not be the best way as the courts could be seen as going beyond their limits. Therefore, it is Parliament that, being the major agent in law-making, is obliged to bring the criminal law in line with the constitution. The Supreme Court, in its several rulings, has made it clear that constitutional morality should be the guiding principle for any legislative action, especially in situations where deeply rooted social traditions are at odds with human rights.

The initial point for change in the law should be the elimination of exception 2 of section 375 of the Indian Penal Code, thus formally recognising that sexual consent must be given even to the spouse. The reform of the law would not weaken the institution of marriage; on the contrary, it would be a step towards the affirmation that marriage is a relationship between two equals, not a permit to use force. The issues of false cases, difficulty in proving the case, and fabrication of complaints can be sorted out by means of procedural safeguards, court discretion, and evidence rules just like it has been done for other sexual offence laws.

11.3 Reconciling Marriage with Constitutional Values

Reconciling marriage with constitutional values requires a shift from viewing marriage as a hierarchical social institution to recognising it as a constitutional relationship grounded in equality and consent. The Supreme Court's recent jurisprudence has consistently affirmed that personal relationships cannot operate as zones of diminished rights. In *Navtej Singh Johar v. Union of India*, the Court emphasised that constitutional guarantees do not retreat at the threshold of private spaces. This reasoning applies with equal force to marital relationships.

A constitutional understanding of marriage demands that dignity, autonomy, and equality remain non-negotiable. Criminalising marital rape would not impose external morality on marriage but would reaffirm the Constitution's promise that every individual, including a married woman, retains control over her body and choices. Legal reform must therefore be accompanied by broader social measures: legal awareness, police training, judicial sensitisation, and survivor support systems, to ensure that formal recognition translates into meaningful protection.

References Cases:

1. Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors. (2017 SC).
2. Independent Thought v. Union of India.
3. State of H.P. v. Mango Ram.
4. Kaini Rajan v. State of Kerala
5. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
6. Joseph Shine v. Union of India, (2019) 3 SCC 39.
7. R v. The House of Lords.
8. RIT Foundation v. Union of India, 2022 SCC Online Del 1404.
9. State of West Bengal v. Anwar Ali Sarkar, A.I.R. 1952 S.C. 75.
10. Shayara Bano v. Union of India, (2017) 9 S.C.C. 1.
11. Joseph Shine v. Union of India, (2019) 3 S.C.C. 39.
12. Anuj Garg v. Hotel Association of India, (2008) 3 S.C.C. 1.
13. Shafin Jahan v. Asokan K.M., (2018) 16 S.C.C. 368.
14. State of Maharashtra v. Madhukar Narayan Mardikar, (1991) 1 S.C.C. 57
15. Consumer Educ. & Research Ctr. v. Union of India, (1995) 3 S.C.C. 42.



16. Suchita Srivastava v. Chandigarh Admin., (2009) 9 S.C.C. 1.
17. Devika Biswas v. Union of India, (2016) 10 S.C.C. 726.
18. Sushil Kumar Sharma v. Union of India, (2005) 6 S.C.C. 281.
19. Rajesh Sharma v. State of Uttar Pradesh, (2017) 8 S.C.C. 821.
20. State of Himachal Pradesh v. Raghbir Singh, (1993) 2 S.C.C. 622.

Books:

1. Manish Dalal and Raj Kumar, ISBN NO.: 9789388147408 (January 2021) (262)
2. T. S. Sathyanarayana Rao, Nilesh Shah, and Chittaranjan Andrade, VOL. 4, Sage Journals (October 31, 2022).
3. Kalantry, S., & G (2015).

Articles and Research Papers:

1. Marital Rape in India: A Denial of Constitutional Rights by V. Vigneswar and M. Kannappan
2. Constitutional Validity of Marital Rape in India by Mahima Yadav, Mukund Kumar Yadav and DR. Santosh Kumar Tiwari
3. Marital Rape from the Perspective of Human Rights and Constitutional Law by Raveena Rao Kallakuru & Pradyumna Soni
4. Criminalisation of Marital Rape in India by Raveena Rao Kallakuru & Pradyumna Soni.
5. Judicial - Legislative Dynamics on Marital Rape in India by Dr Rashmi Singh Rana & Sneha Singh.
6. The grim reality of marital rape in India by Harshit Sharma and Prashant Babbar.

Journals:

1. Nandani, Riya and Nandani, Riya, Marital Rape in India.
2. Ms. Muskan Sharma, Dr. Sonia Rajoria Marital Rape Status in India Volume 7, Issue 2.
3. Debanjan Banerjee and T. S. Sathyanarayana Rao, The Dark Shadow of Marital Rape: Need to Change the Narrative Volume 4, Issue 1

Thesis:

1. A Critical Examination of the Criminalization of Marital Rape in India" (2023).

Legislations:

1. Indian Penal Code, 1872
2. Constitution of India.
3. Protection of Women from Domestic Violence Act, No. 43 of 2005.
4. Criminal Law (Amendment) Act, No. 13 of 2013.

Debates and Reports:

1. Law Commission of India, 84th Report on Rape and Allied Offences (1980).
2. Parliamentary Debates, Lok Sabha, Criminal Law (Amendment) Bill discussions (2013).
3. The Committee on Amendments to Criminal Law (Justice Verma Committee)
4. Report (Jan. 23, 2013) (recommending deletion of marital rape exemption).
5. The Committee on Amendments to Criminal Law (Justice Verma Committee), Report (Jan. 23, 2013).
6. Law Commission of India, 84th Report on Rape and Allied Offences (1980).



International Organisations:

1. World Health Organization, Understanding and Addressing Violence Against Women (2012).
2. U.N. Women, Intersectionality and Violence Against Women (policy brief).
3. Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India 122–25 (Oxford Univ. Press 1999).